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Highlights

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Highlights

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Title 3—

The President

Executive Order 12136 of May 15, 1979

The President's Commission on Executive Exchange

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to amend the responsibilities of the President's Commission on Personnel Interchange and to continue its work of enriching both the Government and the private sectors by enabling the most promising executive to work in the other sector, it is hereby ordered as follows:

1–1. *Establishment of the Commission.*

1–101. The President's Commission on Personnel Interchange is continued and renamed the President's Commission on Executive Exchange.

1–102. The Commission shall be composed of such officials in the Executive agencies and such persons from the private sector as the President may from time to time appoint. The Chairman shall be designated by the President. The members of the commission and the Chairman shall serve two-year terms at the pleasure of the President.

1–103. Members of the Commission who are officers or employees of the Federal Government shall receive no additional compensation by reason of this Order, and members who are not such officers or employees shall serve without compensation, but shall be provided with travel expenses, including per diem in lieu of subsistence, as authorized by law.

1–2. *Functions of the Commission.*

1–201. The Commission shall develop an Executive Exchange Program in which promising executives from the Executive agencies, and from the private sector, who have demonstrated the ability to rise to high management positions, will be selected as Exchange Executives and placed in positions in the other sector which offer significant challenge, responsibility, and regular and continuing contact with senior officials.

1–202. The Commission shall develop an education program which places the work experience of the Exchange Executive in the broader context of both the Federal Government and the private sector.

1–203. The Commission shall supervise and review the operation of the Program, and recommend to the President ways to promote and improve the exchange between the Government and the private sector.

1–204. The Commission shall ensure that the Program operates in compliance with the merit principles set forth in Section 2301 of Title 5 of the United States Code.

1–3. *Responsibilities of Executive Agencies.*

1–301. Each Executive agency shall, to the extent permitted by law, cooperate with the Commission and furnish it with such assistance as the Chairman may request in connection with the Program.

1–302. The head of each Executive agency shall designate a presidential appointee who is not a member of the Commission to serve as liaison to the Commission.

1–4. *Administrative Provisions.*

1–401. The Office of Personnel Management shall provide the Commission with administrative services, staff support, and travel expenses, as authorized by law.

1–402. Executive Order No. 11451 of January 19, 1969, is superseded.

Jimmy Carter

THE WHITE HOUSE,
May 15, 1979.

[FR Doc. 79–15535
Filed 5–15–79; 3:02 pm]
Billing code 3195–01–M

Presidential Documents

Memorandum of May 15, 1979

Trade With Uganda

Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce

Pursuant to the authority vested in me by Section 5 of Public Law 95-435, I hereby determine and certify that:

The Government of Uganda is no longer committing a consistent pattern of gross violations of human rights.

The Secretary of State is requested to report this determination to the Congress on my behalf, as required by law. The Secretaries of Treasury and Commerce are requested to take the appropriate steps permitting the immediate resumption of imports from and exports to Uganda.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, May 15, 1979.

[FR Doc. 79-15536
Filed 5-15-79; 3:03 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Valencia Orange Regulation 612]

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 18–24, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on May 15, 1979 to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges continues to improve.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.912 Valencia Orange Regulation 612.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 18, 1979, through May 24, 1979, are established as follows:

(1) District 1: 563,504 cartons;
(2) District 2: 180,008 cartons;
(3) District 3: 200,502 cartons.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 16, 1979.

D. S. Kuryloski,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-15705 Filed 5-16-79; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 917

[Peach Regulation 11]

Fresh Pears, Plums, and Peaches Grown in California; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets minimum grade and size requirements for shipments of specified varieties of fresh California peaches for the period May 18, 1979, through July 2, 1979. Such action is designed to promote orderly marketing of suitable quality and sizes of fresh California peaches in the interest of producers and consumers.

EFFECTIVE DATES: May 18, 1979, through July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Argicultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Peach Commodity Committee, established under the marketing agreement and order, and upon other available information. It is hereby found that the regulation of shipments of fresh peaches will tend to effectuate the declared policy of the act.

This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee estimates fresh shipments of California peaches at 12.0 million packages, compared with actual shipments of 10.1 million packages last season. The committee reports that the 1979 California peach crop is maturing slightly later than last season, but is sizing normally and of good quality.

The grade and size requirements are necessary to prevent the shipment of California peaches of a lower grade or smaller size than specified and are designed to provide ample supplies of good-quality fruit in the interest of producers and consumers pursuant to the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this regulation until 30 days after publication in the Federal Register (5 U.S.C. 553) because of insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on this regulation at an open meeting held May 8, 1979. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 917.449 Peach Regulation 11.

Order. (a) Peach Regulation 10 (43 FR 20219; 27981) is hereby terminated as of the effective date hereof.

(b) During the period May 18, 1979, through July 2, 1979, no handler shall handle: (1) Any package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade.

(2) Any package or container of Armgold, Desertgold, Pat's Pride, Royal April, Royal Gold, or Springold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in subdivision (i) of this subparagraph (2) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) Any package or container of any type of Babcock, Bonjour, Cardinal, Dixired, Early Coronet, Early Royal May, Flavorcrest, JJK-1, June Lady, May Lady, Merrill Gemfree, Pat's Redhaven, Royal May, or Springcrest variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box;

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box; or.

(iii) Such peaches in any container when packed other than as specified in subdivisions (i) and (ii) of this subparagraph (3) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 79 peaches.

(4) Any package or container of Aurora, Coronet, Indian Red, Merrill Gem, Redhaven, Redtop, or Regina variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 70 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in subdivisions (i) and (ii) of this subparagraph (4) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 71 peaches.

(5) Any package or container of Angelus, Autumn Gem, Bella Rosa, Belmont, Cal Red, Carnival, Early Fairtime, Early O'Henry, Fairtime, Fay Elberta, Fayette, Fiesta, Fire Red, Flamecrest, Fortyniner, Franciscan, Halloween, John Gee, Jody Gaye, July Elberta (Early Elberta, Kim Elberta, and Socala), July Lady, Madera Gem, Mardigras, Merricle, O'Henry, Pacifica, Pageant, Parade, Paradise, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Regular Elberta, Rio Oso Gem, Scarlet Lady, Sparkle, Summerset, Summertime, Suncrest, Sun Lady, Toreador, Treasure, Williams Gem, or Windsor variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box;

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of stand pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in subdivisions (i) and (ii) of this subparagraph (5) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches.

(c) During the period May 18 through July 2, 1979, no handler shall handle any package or container of any variety of peaches not specifically named in subparagraphs (2), (3), (4), or (5) of paragraph (b) unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in subparagraph (i) of this paragraph (c) are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(d) As used herein, "U.S. No. 1" and "standard pack" mean the same as defined in the United States Standards for Peaches (7 CFR 2851.1210–1223); "No. 22D standard lug box" and "No. 12B standard fruit (peach) box" mean the same as defined in Section 1387.11 of the "Regulations of the California Department of Food and Agriculture." All other terms mean the same as defined in this marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 15, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-15627 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 917

[Plum Regulation 15]

Fresh Pears, Plums, and Peaches Grown in California; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets minimum grade and size requirements for fresh shipments of California plums during the period May 18, 1979, through July 14, 1979. These requirements are needed to provide for orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: May 18, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Plum Commodity Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

This regulation is based upon an appraisal of the current and prospective market conditions for California plums. The committee estimates that 12.75 million packages of plums will be available for fresh shipment during the 1979 season compared to actual shipment of 10.8 million packages last season. The 1979 California plum crop is reported to be of good quality at this time with uniform sizing. Industry reports indicate that 1979 shipments of fresh California peaches and nectarines will be larger than last season. These fruits will provide strong market competition for fresh California plums.

The regulation specifies a minimum grade of U.S. No. 1 for all varieties of plums, except that an additional 10 percent tolerance is provided for defects not considered serious for two varieties (Tragedy and Kelsey). It also exempts from consideration as damaged, healed stem end cracks for 17 named varieties and gum spots for one variety (Late Tragedy). The regulation would also set minimum size requirements for 49 specified varieties of plums in terms of the maximum permissible number of plums contained in an eight-pound sample.

The grade and size requirements are necessary to prevent the shipment of California plums of a lower grade and smaller size than specified and are designed to provide ample supplies of good quality plums in the interest of producers and consumers pursuant to the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 917.450 Plum Regulation 15.

Order. (a) During the period May 18, 1979, through July 14, 1979, no handler shall ship any lot of packages or containers of any plums, other than the varieties named in paragraph (b) hereof, unless such plums grade at least U.S. No. 1.

(b) During the period May 18, 1979, through July 14, 1979, no handler shall ship:

(1) Any lot of packages or containers of Tragedy or Kelsey plums unless such plums grade U.S. No. 1, with a total tolerance of 10 percent for defects not considered serious damage in addition to the tolerances permitted by such grade; or

(2) Any lot of packages or containers of Angeleno, Andys Pride, Autumn Queen, Bee Gee, Casselman, Empress, Fresno Rosa, Grand Rosa, Improved Late Santa Rosa, King David, Late Santa Rosa, Linda Rosa, Red Rosa, Rosa Grande, Roysum, SW-1, and Swall Rosa plums unless such plums grade U.S. No. 1, except that healed cracks emanating from the stem end which do not cause serious damage shall not considered as a grade defect with respect to such grade; or

(3) Any lot of packages or other containers of Late Tragedy plums unless such plums grade U.S. No. 1, except that gum spots which do not cause serious damage shall not be considered as a grade defect with respect to such grade.

(c) During the period May 18, 1979, through July 14, 1979, no handler shall ship any package or other container of any variety of plums listed in Column A of the following Table I unless such plums are of a size that an eight-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in column B of said table.

Table I

Column A variety	Column B plums-per-sample
Ace	55
Amazon	64
Andys Pride	69
Angeleno	67
Autumn Rosa	72
Beauty	91
Bee Gee	65
Black Beaut	74
Burmosa	60
Casselman	63
Duarte	62
Durado	91
Ebony	66
El Dorado	68
Elephant Heart	53
Empress	57
Fresno Rosa	62
Friar	56
Frontier	61
Gar-Rosa	71
Grand Rosa	54
July Santa Rosa	69
Kelsey	47
King David	50
Laroda	58
Late Santa Rosa (including Improved Late Santa Rosa and Swall Rosa)	64
Linda Rosa	63
Mariposa	61
Midsummer	63
Nubiana	56
President	57
Queen Ann	50
Queen Rosa	53
Red Beaut	87
Red Glow-Golden Glow	60
Red Rosa	64
Redroy	58
Rosa Ann	69
Rosa Grande	63
Roysum	80
Santa Rosa	69
Simka, Arrosa, New Yorker	50
Standard	83
Tragedy	114
Wickson	51

(d) When used herein, "U.S. No. 1" and "serious damage" shall have the same meaning as set forth in the United States Standards for Fresh Plums and Prunes (7 CFR 2851.1520–1538); and all other terms shall have the same meaning as when used in the amended marketing agreement and order.

(e) Plum Regulation 14 (43 FR 21636, 29526) is hereby terminated as of the effective date hereof.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 15, 1979, to become effective May 18, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-15628 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-02

7 CFR Part 918

Georgia Peaches; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and rate of assessment for the 1979–80 fiscal period, to be collected from handlers to support activities of the Industry Committee which locally administers the Federal marketing order covering Georgia peaches.

DATES: Effective March 1, 1979, through February 29, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918) regulating the handling of peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based on the recommendation and information submitted by the Industry Committee, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act. This action has not been determined significant under USDA criteria for implementing Executive Order 12044.

§ 918.217 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Industry Committee during the period March 1, 1979, through February 29, 1980, will amount to $16,925.

(b) The rate of assessment for said period payable by each handler in accordance with § 918.41 is fixed at $0.011 per bushel (48 pounds net weight) of peaches.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), as the order requires that the rate of assessment for a particular fiscal year shall apply to all assessable peaches handled from the beginning of such year which began March 1, 1979. To enable the committee to meet fiscal obligations which are now accruing, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674))

Dated: May 14, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79–15380 Filed 5–16–79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 979

Melons Grown in South Texas; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of melons grown in designated counties in South Texas to be inspected and meet minimum grade, quality and container requirements. The regulation will promote orderly marketing of such melons and keep less desirable qualities from being shipped to consumers.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegatable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447–6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 156 and Order No. 979 (44 FR 22038) regulate the handling of melons grown in 19 designated counties of South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The South Texas Melon Committee, established under the order, is responsible for its local administration.

This regulation is based upon unanimous recommendations made by the committee at its public meetings in McAllen and Weslaco, Texas, on April 17, 19 and 25, 1979. The recommendations of the committee reflect its appraisal of the expected volume and composition of the 1979 spring crop of South Texas melons and of the marketing prospects for the shipping season which has begun.

The regulation will benefit consumers and producers by standardizing and improving the quality of melons shipped from the production area. The grade requirements will prevent melons of poor quality from being shipped to fresh market outlets. Not more than 50 percent of the melons in any lot may fail the requirements for U.S. Commercial grade. A tolerance of 20 percent is allowed for serious damage of which not more than 10 percent may be for melons affected by soft decay. Black surface discoloration is not considered a defect. Individual cartons are required to contain at least 25 percent U.S. Commercial quality melons.

The container requirements will prevent the shipment of bulk loads of packing house culls which adversely affect the reputation and returns of packed South Texas melons. However, the containers required are those customarily packed for the retail trade.

Notice of rulemaking was published in the May 3, 1979, Federal Register (44 FR 25846). The notice afforded interested persons through May 12, 1979, to file written comments on the proposal.

A comment was filed May 10 by the committee to add a provision authorizing exemption of existing inventories of containers from paragraph (b)(1). It resulted from a handler, who had a supply of wire-bound crates that would not meet container requirements, requesting permission to use his remaining inventory. The comment has merit and paragraph (b)(4) has been added to provide relief to handlers who may experience this type of problem. However, handlers desiring such exemption must first apply in writing to the committee and obtain a permit. Permits and their use will be supervised by the committee.

Exceptions are provided to certain of these handling requirements to recognize special situations in which such requirements are inappropriate or unreasonable. Up to 120 pounds of melons may be handled, other than for resale, per person per day without regard to requirements of this section in order to avoid placing an unreasonable burden on persons handling noncommercial quantities of melons.

The requirements with respect to special purpose shipments allow the shipment of melons for charity, relief, canning and freezing. Shipments of melons for canning or freezing are exempt under the legislative authority for this part. Shipments for charity or relief are exempt since no useful purpose would be served by regulating such shipments.

Findings. After consideration of all relevant matters, including the proposal set forth in the notice and the comment filed by the committee, it is hereby found that the handling regulation as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of melons from the production area have begun, (2) to maximize benefits to producers this regulation should apply to as many shipments as possible during the marketing season, and (3) producers and handlers have been informed of these requirements and strongly supported them at the April 17, 19 and 25, 1979, public meetings. Compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date hereof.

This regulation amends 7 CFR 979 by adding the following new section:

§ 979.301 Handling regulation.

From the effective date herein through August 31, 1979, no person shall handle cantaloup or honey dew melons unless they meet the requirements of paragraphs (a) through (c), (d) or (e) and (f) of this section.

(a) *Grade requirements.* Not more than 50 percent of the melons in any lot may fail to meet the requirements of U.S. Commercial grade except no more than 20 percent shall be allowed for serious damage, and including in this latter amount not more than 10 percent for melons affected by soft decay. Black surface discoloration shall not be considered as a grade defect with respect to such grade. Individual cartons shall contain not less than 25 percent U.S. Commercial or better quality.

(b) *Container requirements.* (1) Except as provided in paragraphs (b)(5), (d) or (e) and (f) all cantaloups shall be packed in fiberboard cartons with inside dimensions of not more than 17¼ nor less than 16¾ inches in length, not more than 13 nor less than 12¾ inches in width, and not more than 10⅜ nor less than 9¾ inches in depth. All honey dew melons shall be packed in fiberboard cartons with inside dimensions of 17 inches long by 15¼ inches wide and not more than 7½ inches nor less than 6½ inches deep. A tolerance of ¼ inch for each dimension shall be permitted.

(2) Each container shall be marked to indicate the count; the name, address, and zip code of the shipper; the name of the product; and the words "Produce of U.S.A." or "Product of U.S.A."

(3) If the container in which the melons are packed is not clean and bright in appearane without marks, stains, or other evidence of previous use, the container shall be conspicuously marked with the words "USED BOX" in letters not less than three-fourths (¾) inch high.

(4) The committee may exempt handlers from the container requirements of (b)(1) above to allow the one-time use of existing inventories of containers that do not meet these requirements.

Handlers requesting exemption from container requirements shall apply to the committee in writing and furnish the committee with such information as it deems necessary including the quantity to be shipped and the reason for the exemption. The committee may then at its option issue to the handler a permit authorizing the use of a specified number of containers for one-time use only under committee supervision. If the request of such handler is denied in whole or part, the committee shall promptly inform the handler of its action.

(5) These container requirements shall not be applicable to melons sold to Federal agencies.

(c) *Inspection.* (1) No handler may handle any melons regulated hereunder except pursuant to paragraphs (d) or (e) and (f) of this section unless an inspection certificate has been issued covering them and the certificate is valid at the time of shipment.

(2) No handler may transport by motor vehicle or cause such transportation of any shipment of melons for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable. A copy of such inspection certificate or committee document shall be surrendered upon request to authorities designated by the committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(4) Designated inspection stations will be located at the Texas Federal Inspection Service office, 1301 W. Expressway, Alamo (Phone (512) 787-4091 or 6881) and the Matt Dietz Packing Co., 4700 N. Santa Maria, Laredo, phone (512) 723-9178 or 9170, to be available for handlers who do not have permanent packing facilities recognized by the committee.

(5) Handlers shall pay assessments on all assessable melons according to the provisions of § 979.42, at the rate of 1½ cents per carton.

(d) *Minimum quantity exemption.* Not withstanding any other provision of this section, melons may be handled without regard to the provisions of §§ 979.42, 979.52, 979.60, and 979.80 and the regulations issued thereunder, if the shipment does not exceed 120 pounds net weight of melons to any one person during any one day, except that the exempted quantity shall not be included as a part of any shipment exceeding 120 pounds and further that such melons are not for resale.

(e) *Special purpose shipments.* (1) The requirements of paragraphs (a) through (c) of this section shall not apply to shipments for charity, relief, canning and freezing if a handler presents a Certificate of Privilege for such melons prior to handling them in accordance with § 979.155.

(2) Melons failing to meet the requirements of paragraphs (a) through (c) of this section and not exempt under paragraphs (d) or (e), and all melons discarded from the grading table shall either be mechanically spiked or mutilated or handled for special purpose outlets in accordance with § 979.152.

(f) *Safeguards.* Each handler making shipments of melons for relief, charity, canning or freezing under paragraph (e) of this section shall:

(1) Notify the committee of the intent to ship melons under paragraph (e) of this section by applying on forms furnished by the committee for a Certificate of Privilege applicable to such special purpose shipments.

(2) Obtain an approved Certificate of Privilege.

(3) Prepare on forms furnished by the committee a special purpose shipment report for each individual shipment.

(4) Forward copies of the special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee's office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for suspension of such handler's Certificate of Privilege applicable to such shipments.

(g) *Definitions.* "U.S. melon standards" means the United States Standards for Grades of Cantaloups (7 CFR 2851.475-2851.494c), or the United States Standards for Grades of Honey Dew and Honey Ball Type Melons (7 CFR 2851.3740-2851.3749), whichever is applicable, or variations thereof specified in this section. The term "U.S. Commercial" shall have the same meaning as set forth in these standards.

All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 156 and this part.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated: May 15, 1979, to become effective May 17, 1979.

Note.—This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-15505 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 979

Melons Grown in South Texas; Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This subpart establishes the rules and regulations for the operation of Order No. 979 regulating the handling of melons grown in South Texas, which became effective April 13, 1979 (44 FR 22038). The rules are necessary for implementation of the order and contain the general requirements relating to the conduct of meetings, setting of the fiscal period, nomination of public members, special purpose shipment procedures and reporting requirements.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 156 and Order No. 979 (7 CFR Part 979) regulate the handling of melons grown in 19 designated counties of South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Notice of rulemaking was published in the May 3, 1979, Federal Register (44 FR 25848). The notice afforded interested persons through May 12, 1979, to file written comments on the proposal. None was filed.

These rules and regulations were recommended by the South Texas Melon Committee at its public meetings in McAllen and Weslaco, Texas, on April 17, 19 and 25.

The order is defined in this subpart to provide a means of referring to this part without using the citation each time.

The fiscal period is set at May 1 through April 30 of the following year. This allows time for the budget to be prepared, recommended and approved prior to the time disbursements of committee funds are made.

The rules also contain eligibility requirements for the public member. The requirements would provide representation from a nonagricultural point of view; from someone not having a financial (or economic) interest in, or other close association with the production, processing, financing or marketing of melons. The public member and alternate will be nominated by the growers and handlers on the committee and will serve the same term of office as other committee members.

Nomination procedures for public members are also included in the rules. Under these rules, questionnaires may be sent to interested persons to determine their qualifications. The names and qualifications are then submitted to the committee. After the initial season, the names of persons nominated for public member and alternate positions are to be submitted to the Secretary by January 15.

The committee is authorized to meet by telephone since it may not always be practical or expedient to hold an assembled meeting. Such telephone meetings may be called only by the chairman or vice-chairman acting in his stead, and seven affirmative votes are required to approve any action. All votes must be promptly confirmed in writing by the voter.

Procedures for the handling of culls are specified by the rules. Melons failing the requirements contained in the handling regulation are required to either be spiked or mechanically mutilated or be handled for special purpose outlets. This will preclude entry of poor quality or otherwise unsuitable melons into normal channels of trade to the detriment of the melon industry.

Handlers making shipments of melons for special purposes are required to provide the committee with information regarding such shipments to preclude the entry of the melons into normal channels of trade. Handlers are required to obtain a Certificate of Privilege from the committee and comply with all reporting requirements. This will give the committee the information necessary for determining compliance. The rules contain the necessary procedures for determining qualification, application for the Certificate, approval by the committee and disqualification.

In order to help the committee become informed on the size and quality of the crop, each handler is required to furnish, during the planting season, information on a bi-weekly basis to the committee. Such information may include the number of acres and location of cantaloups and honey dew melons planted by them or by growers for whom they pack.

The rules and regulations were discussed at three widely publicized open public meetings where interested persons were given opportunities to make comments. Producers and handlers attending the meetings strongly supported the proposal.

After consideration of all relevant matters, including the proposals set forth in the notice, it is hereby found that these rules and regulations will tend to effectuate the declared policy of the act. It is further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of melons from the production area have already begun, (2) to maximize benefits to producers the provisions of these rules and regulations should cover as many shipments as possible, (3) information regarding these provisions has been made available to producers and handlers in the production area, and (4) compliance with this regulation will not require any special preparation on the part of persons subject to it that cannot be completed by the effective date.

The new sections to be added to 7 CFR Part 979 read as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

Sec.

* * * * *

§ 979.100 Order.

"Order" means Order No. 979 (§§ 979.1 to 979.92; 44 FR 22038) regulating the handling of melons grown in South Texas.

§ 979.106 Registered handler.

For purposes of this part, a registered handler is a person who has adequate facilities for packing melons for market and who assumes initial responsibility for compliance with inspection, assessment, and other regulatory requirements on the handling of melons grown in the production area. Any person who wishes to become a registered handler shall make application for registration with the committee on forms furnished by the committee. If such applicant has facilities available which are determined by the committee as adequate for the packing of melons, such person may be approved as a registered handler. Growers who make deliveries of fieldrun melons to such registered handlers are hereby determined to be exempt from otherwise applicable regulations pursuant to this part.

§ 979.110 Fiscal period.

"Fiscal period" means the annual period beginning May 1 and ending on April 30 of the following year.

§ 979.122 Eligibility requirements for public members.

(a) A public member shall represent a nonagricultural point of view, and shall not have a financial (or economic) interest in, or be closely associated with the production, processing, financing or marketing of melons.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of the production area.

(d) Public members shall be nominated by the South Texas Melon Committee and shall serve a two-year term which coincides with the term of office of producer or handler members of the committee.

§ 979.126 Nomination procedures for public members.

(a) Names of candidates together with evidence of qualification for public membership on the South Texas Melon Committee shall be submitted to the committee at its business office.

(b) Questionnaires may be sent by the committee to those persons submitted as candidates, to determine their eligibility and interest in becoming a public member.

(c) The names of persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by January 15 with such information as deemed pertinent by the committee or as requested by the Secretary.

(d) Nomination of the initial public member shall be made as soon as possible but not later than 90 days after the first meeting of the committee.

§ 979.132 Procedure.

The committee shall be authorized to meet by telephone or other means of communication. Any vote at such a meeting shall be promptly confirmed in writing by each voter. On such occasions seven affirmative votes shall be necessary to approve any action. Telephone meetings shall be called only by the Committee chairman or vice-chairman acting in his stead.

§ 979.152 Handling of culls.

(a) The handling of culls, i.e., melons which fail to meet the grade, size, quality or other requirements established under § 979.52(b) of this part is prohibited unless such melons are:

(1) Mechanically spiked or mutilated at the packing shed rendering them unsuitable for fresh market; or

(2) Handled for special purpose outlets approved under § 979.54 of this part.

(b) As a safeguard against culls entering fresh market channels each handler under subparagraph (2) shall apply for and obtain a certificate from the committee which shall require the handler to furnish such reports or other information as the committee may request.

§ 979.155 Safeguards.

(a) *Policy.* Whenever shipments of melons for special purposes pursuant to § 979.54 are relieved in whole or in part from regulations issued under § 979.52, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such melons in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

(b) *Qualification.*—Before handling melons for special purposes which do not meet regulations issued pursuant to § 979.52, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify one must (1) apply for and receive a Certificate of Privilege indicating the intent to so handle melons, (2) agree to comply with reporting and other requirements set forth in § 959.155 with respect to such shipments, and (3) receive approval of the committee, or its duly authorized agents, to so handle melons. Such approval will be based upon evidence furnished in the application for Certificate of Privilege and other information available to the committee.

(c) *Application.* (1) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, quality and container of the melons to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the melons are to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 979.155.

(2) The committee may require each handler making shipments of melons for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525–V applicable to such shipment.

(d) *Approval.* The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of melons to be sold or transported to a designated consignee for the purpose declared.

(e) *Reports.* Each handler of melons shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

(f) *Disqualification.* The committee from time to time may conduct surveys of handling of melons for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of melons in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

§ 979.180 Reports

Each handler shall furnish every two weeks during the planting season to the committee on a form provided by the committee the number of acres of cantaloups and honey dew melons planted by the handler or growers for whom the handler packs melons during such period and the location of such plantings. However, during the first season of operation under the order each handler need only report the number of acres each of cantaloups and honey dew melons planted together with the location of all such plantings.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: May 15, 1979 to become effective May 17, 1979.

Note.—This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-15506 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

[FmHA Instruction 1980-A]

7 CFR Part 1980

Program Regulations; General Amendments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to add a settlement option for lenders who acquire property either through voluntary conveyance or foreclosure. Such an option is not available under current regulations. This change is necessitated to handle current loans involving foreclosure. The effect of the change will permit the lender to calculate the final loss settlement using net proceeds received at final liquidation rather than a bid value at the time of a public sale. In addition, lenders would not be violating their legal lending limits and the Government would not be paying excessive loss settlements.

EFFECTIVE DATE: March 17, 1979.

FOR FURTHER INFORMATION CONTACT: Darryl H. Evans, Loan Specialist, Telephone 202–447–4150.

SUPPLEMENTARY INFORMATION: § 1980.64 of Subpart A of Part 1980 of Chapter XVIII, Title 7, Code of Federal Regulations is amended to add a new subparagraph (c).

Under present regulations, once collateral is acquired by a lender by voluntary Conveyance at foreclosure through the use of a protective bid, the liquidation of that collateral would be complete. At this point a lender would be required to file with FmHA a final report of loss using the value assigned for voluntary Conveyance purposes or the protective bid value in calculating any loss. In addition, the lender may be violating its legal lending limit should the acquisition value exceed its lending authority. The government could also pay out excess amounts in loss settlements where acquisition values are less than the amount realized at final sale of the collateral.

The proposed change would eliminate these problems by permitting the lender the option to calculate the final loss at the time the collateral is actually sold if the lender acquires it. The guarantee would continue to final liquidation.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published for proposed rulemaking since this change is beneficial to all parties of interest and is considered necessary to administer current loans in foreclosure. Therefore, public participation is unnecessary. This determination was made by Darryl H. Evans.

Accordingly, § 1980.64(c) of Subpart A of Part 1980 is added and reads as follows:

§ 1980.64 Liquidation.

* * * * *

(c) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, FmHA may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA, and FmHA must agree, prior to the lender submitting any request for estimated loss payment.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statement." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, P.L. 91–190, an Environmental Impact Statement is not required.

This regulation has not been determined significant under USDA criteria implementing Executive Order 12044.

A copy of the Impact Analysis Statement is available at the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S.D.A., Room 6348, South Agriculture Building, Washington, D.C. 20250.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 P.L. 93–357 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

Dated: April 25, 1979.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 79-15329 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-07-M

Office of the Secretary

7 CFR Part 2900

Essential Agricultural Uses and Requirements—Natural Gas Policy Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621, November 9, 1978) provides that the Secretary of Agriculture shall certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements of essential agricultural uses for full food and fiber production.

The Final Rule determines and certifies the essential agricultural uses and the natural gas requirements of such uses necessary for full food and fiber production. It is intended to supplant the Interim Final Rule presently incorporated by reference in both the Secretary of Energy's final rule and the Federal Energy Regulatory Commission's (FERC) interim rule.

EFFECTIVE DATE: The Final Rule will become effective on May 14, 1979.

FOR FURTHER INFORMATION CONTACT: Weldon V. Barton, Director, Office of Energy, USDA, 202–447–2455.

SUPPLEMENTARY INFORMATION: Under Section 401(a) of the NGPA, the Secretary of Energy is required to prescribe and make effective a rule providing that to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless the curtailment does not reduce the quantity of natural gas delivered for such use below the amount certified by the Secretary of Agriculture or is necessary to serve high priority users. This rule, incorporating the Secretary of Agriculture's certification, was required by statute to be made effective not later than March 9, 1979.

On November 24, 1978, the Secretary of Agriculture published in the Federal Register (43 FR 54938) a proposed rule to certify essential agricultural uses of natural gas and the amounts of natural gas (in percentages of use) required for such essential agricultural uses. The Proposed Rule set forth the certification by the Secretary of Agriculture of (1) essential agricultural uses and (2) the natural gas requirements of those essential agricultural uses, as required under Section 401(c), NGPA.

In order to meet the statutory time constraints for providing relief from supply curtailment to essential agricultural users and to allow comment on and consideration of environmental effects, an interim final rule was issued on March 1, 1979, with the indication that it would be superseded by a permanent rule about April 30, 1979.

This interim period has permitted the USDA to reevaluate the Proposed Rule and public comments thereon, as well as comments on the Draft Economic and Environmental Impact Statement issued on February 23, 1979, and to develop the Final Rule as appropriate for the longer term.

I. Statutory Background

Natural gas is a crucial energy source in the food and fiber system. The desirability of clean-burning natural gas in food processing where the flame directly contacts the foodstuffs, the perishability of many food and fiber commodities, the unpredictability of fuel supply requirements in the agricultural sector due to weather variations, and the particular impact of price and supply availability of natural gas on food price volatility and resultant inflationary pressures, justify the special end-product approach to natural gas curtailment policy in the case of the food and fiber system, as reflected in Section 401(c) of the NGPA.

The NGPA provides for such an end-product curtailment priority for essential agricultural uses of natural gas which are necessary for full food and fiber production. The subparts of Section 401 explain the statutory responsibilities of each of the three agencies involved in implementing the agricultural priority, and specify the criteria for defining the scope of the program.

Section 401(c) provides that the Secretary of Agriculture "shall certify to the Secretary of Energy and the FERC, the natural gas requirements (expressed either as volumes or percentages of use) persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production."

Section 401(b) authorizes the FERC, in consultation with the Secretary of Agriculture, to make determinations regarding the economic practicability and reasonable availability of a fuel other than natural gas as an alternative for any agricultural use of natural gas. The Conference Report accompanying the NGPA states, regarding Section 401(b), that "The conferees intend that the authority to restrict curtailment priority by determining that alternative fuels are economically practicable and reasonably available be utilized only in cases where it is clear that both tests are met. One of the reasons for imposing such a requirement is to prevent unnecessary increases in the cost of food in this country. The Commission determination that an alternative fuel is 'economically practicable' shall not include a requirement to switch to high-cost alternatives. That is not what the conferees consider to be 'economically practicable'."

Section 401(d) provides that the "Secretary of Agriculture may intervene as a matter of right in any proceeding before the Commission which is conducted in connection with implementing the requirements" of the Secretary of Energy's rule pursuant to Section 401(a).

For purposes of Section 401 of the NGPA, Section 401(f) stipulates that the term "essential agricultural use," when used with respect to natural gas "means any use of natural gas—

(a) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

(b) as a process fuel or feedstock in the production of fertilizer agricultrual chemicals, animal feed, or food,

which the Secretary of Agriculture determines is necessary for full food and fiber production."

The Final Rule is intended to certify two specific determinations that are required of the Secretary of Agriculture under Section 401 of the NGPA. The rule provides to the Secretary of Energy and to the FERC the following certifications:

(a) Essential agricultural *uses* of natural gas, expressed as classes of establishments or portions thereof that use gas for essential agricultural purposes; and

(b) Essential agricultural current *requirements* of natural gas in order to meet full food and fiber production, expressed as percentages of use.

II. Certification of Essential Agricultural Uses

The classes of use included in the Final Rule remain identical to those in the Interim Final Rule, except that food stores (SIC 54) have been added to the certification list.

As noted above, one responsibility of the Secretary of Agriculture under the Section 401 of the NGPA is to determine essential agricultural uses, that is, the uses of natural gas for certain statutorily enumerated functions which the Secretary determines are necessary for full food and fiber production.

Food stores had not been included in the Proposed Final Rule because the volume of natural gas involved in the case of any such establishment was assumed to be less than 50 mcf/day and therefore would be covered in a higher priority (small-scale commercial) than that provided by Section 401.

Public comments received indicated that certain food warehouses classified within SIC 54 consume more than 50 mcf/day. Since it was intended to include the storage and warehousing functions of SIC 54 in the Interim Final Rule, this final rule certified all uses of natural gas within SIC 54 as essential agricultural uses necessary for full food and fiber production. The operation of food stores, including warehousing and storage functions, are necessary to prevent food spoilage and product loss and thus are necessary for full food and fiber production. Consequently, SIC industry 54—food stores—has been added to the certification list. Because SIC 54 is added to the certification list, it is not necessary to specifically include SIC 5462—retail bakeries (baking and selling)—as in the Interim Final Rule. These establishments are classified within SIC 54.

Public comments on the Proposed Rule included arguments both for and against a much broader determination of uses of natural gas for natural fiber processing which are necessary for full food and fiber production. Specifically, comments centered on the wood and lumber industry (SIC 24), the paper and allied products industry (SIC 26), and the textile industry (SIC 22).

Because of the level of public interest regarding these industries and the substantial amounts of natural gas involved, the public comments and relevant information were reevaluated and the arguments on both sides were carefully weighed in drafting the Final Rule.

In the Interim Final Rule, cotton ginning and compressing (in SIC 0724) was included in the certification list but SIC 22 (with the exception of wool carding and topping in SIC 2299) was not included. The wood and lumber, and paper and allied products industries were also not included in the certification list.

A reevaluation of public comments and relevant information reaffirmed the exclusion of SIC industries 22, 24, and 26 (except wool carding and topping in SIC 2299) from the certification list as in the Interim Final Rule.

The rationale specifically stated for not including the lumber and paper industries in the Interim Final Rule was that "Congress did not express an intention to include wood as natural fiber for purposes of Title IV of the NGPA and that wood as an input for food packaging is several steps removed from the final product."

Section 401(f)(1) of the NGPA provides a list of functions for which the use of natural gas is eligible to be certified as an essential agricultural use based upon a determination of the Secretary of Agriculture that the use of natural gas for that purpose is "necessary for full food and fiber production." "Full food and fiber production" is in turn defined in Section 2900.2(a) in the Proposed, Interim Final, and Final Rules to include "the processing of food and fiber into stable and storable products * * *."

As a result of the review process, it was concluded that SIC industries 24 and 26 should not be included. The use of natural gas for these functions is not deemed "necessary for full food and fiber production." Harvested wood in the form of logs or bolts is in a stable and storable form and is not subject to significant deterioration during extended periods of natural gas curtailments. The case of lumber or paper manufacturers, in this regard, could be contrasted to that of the grain dryer, vegetable processor, or cotton ginner. Logs can be kept wet to prevent cracking for extended periods of time. No evidence was found to indicate that wood must go through a manufacturing process in order to be converted into a stable and storable product. Furthermore, there was no indication in the public comments that SIC industries 24 and 26 have suffered product losses due to natural gas curtailments, which, for several industries within those two groups, have been substantial.

Textile operations (except for wool carding and topping SIC 2299), were not included in the Interim Final Rule for the following reasons: (1) cotton fiber is stabilized against deterioration in the ginning and compressing operations prior to the textile mill stage; (2) the statute's restriction of coverage to natural (as opposed to synthetic) fibers mitigates against coverage on grounds of administrative practicality; and (3) the Conference Report referred to an intention of Congress "to prevent unnecessary increases in the cost of *food* in this country." (Emphasis added.)

A reevaluation of public comments and relevant materials led to the conclusion that the use of natural gas in textile manufacturing operations (except for wool carding and topping in SIC 2299), although eligible for consideration on the basis of being a use for natural fiber processing, is not "necessary for full food and fiber production," and therefore should not be included in the certification list as an essential agricultural use.

In the definition of "full food and fiber production," as quoted above, fiber processing is included to the extent that resulting products are stable and storable. Full food and fiber production is clearly satisfied by inclusion of cotton ginning and compressing, since baled and compressed cotton is stable and storable, and is available for industrial use or export.

Wool carding and topping is analogous to ginning and compressing cotton in that it is necessary to prevent deterioration of the wool fiber. For this reason, it is determined that wool carding and topping (in SIC 2299) is necessary for full food and fiber production. Wool carding and topping, as included in the Interim Final Rule, is retained in the Final Rule.

The determination of "essential agricultural uses" pursuant to Section 401(f)(1), which is predicated upon a determination by the Secretary that for purposes of curtailment protection, a use of natural gas for certain eligible uses is necessary for full food and fiber production, should not be construed as any indication of what is or is not an "agricultural use" for purposes of other sections of the NGPA, notably Section 206.

III. Certification of Current Requirements

The Proposed Rule certified natural gas requirements as 100 percent of current requirements for each essential agricultural use as authorized by Section 401(c), NGPA: "The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed as volumes or percentage of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production."

The public was requested to comment specifically on the following issues related to requirements:

- Determination of amounts, including how a current method of determining natural gas requirements may be carried out;
- Relation to new agricultural facilities;
- Rendering the rule practicable and equitable to the maximum extent; and
- Facilitation of the USDA rule in assisting FERC alternate fuel determinations (Section 401(b), NGPA) to prevent avoidable delays in implementing the agricultural priority.

The public comments dealt with several important elements of the Secretary's responsibilities with respect to the volumetric component of this certification, including: (1) current or historical base method for certification; (2) categories and actual levels of natural gas requirements to be certified as necessary for full food and fiber production; and (3) detailed implementation procedures whereby the Secretary of Agriculture's certification of current requirements would be translated into facility-specific pipeline gas entitlements.

Volumetric requirements of large-scale users were treated precisely in the Interim Final Rule in order to specify more accurately the volumes of natural gas involved. A multiple-option, rolling base period approach, corrected to include natural gas not used due to curtailments of process and feedstock gas of plant shutdowns, was intended to provide full requirements of natural gas for essential agricultural users, in a manner conducive to effective implementation.

The USDA has continued to assess options available for the Final Rule since the March 1, 1979 publication of the Interim Final Rule. The proposed and interim final certifications and public comments have been reevaluated and the environmental impacts of options, including all public comments directed thereto, have been carefully considered.

The USDA has determined that specifications of natural gas requirements by using the base period approach contained in the Interim Final Rule would not be sufficiently flexible and responsive on a permanent basis to assure full food and fiber production in the event of significant increases in output levels or processing requirements brought about by changes in weather or other factors.

The Proposed Rule contemplated a current, rather than an historical base period, method for determining volumetric requirements, recognizing the vagaries of nature whereby energy demands unpredictably vary from season to season and year to year. The Interim Final Rule departed from this position somewhat for large, off-farm uses. Public comment on the Draft

Economic and Environmental Impact Statement included the contention that, although the draft statement recognized the biological nature of agricultural production, it failed to address adequately the impact of such fluctuations on the natural gas requirements of *all* essential agricultural uses. The Final Economic and Environmental Impact Statement assesses the ramifications of the biological nature of agriculture as reflected in fluctuations in the fertilizer industry, crop drying and food processing. The data indicates that USDA certification by means of a rolling base period would not be sufficiently flexible and responsive to provide for natural gas requirements necessary for full food and fiber production in all instances.

Section 401(c) of the NGPA expressly authorizes the Secretary of Agriculture to certify the natural gas requirements of essential agricultural users in terms of either volumes of percentages of use. The certification of volumetric requirements in the Interim Final Rule was designed to make the maximum use of the authority under Section 401(f) to define "essential agriculural use" as "any use of natural gas . . . which the Secretary of Agriculture determines is *necessary* for full food and fiber production;" (emphasis added) in order to avoid duplicate decisionmaking by the Secretary of Agriculture and the Federal Energy Regulatory Commission. Generally, the Interim Final Rule sought to harmonize the potentially overlapping responsibility of the FERC, in consultation with the Secretary of Agriculture, under 401(b), to determine whether a fuel other than natural gas is economically practicable and reasonably available as an alternative to a volume of use certified by the Secretary of Agriculture under Section 401(c) (in which case the protection against curtailment for that specific use would not apply), and of the Secretary of Agriculture under Section 401(f), to exclude from his initial certification any use of gas which he determines not "necessary" for full food and fiber production.

Reversion to the percentage certification of essential agricultural use requirements, as formulated in the Proposed Rule, shifts to FERC, in consultation with the Secretary of Agriculture, the initiative for the alternative fuel capability determinations, without undue duplicative decisionmaking.

Having duly considered the full public record, including all recent comments in the context of the statutory obligations of the Secretary of Agriculture pursuant to Section 401 of the NGPA, the USDA Final Rule contains the following variations from the Interim Final Rule regarding natural gas requirements of essential agricultural uses:

(1) The USDA Final Rule reverts to the position in the Proposed Rule of certifying 100 percent of current requirements as necessary for full food and fiber production. Implementation in the pipeline curtailment plans is within FERC statutory responsibility; the Secretary of Agriculture may intervene in any such proceedings as a matter of right.

(2) The USDA Final Rule reverts to the position in the Proposed Rule of not discriminating as to types of use, since 100 percent of current requirements is appropriate for all essential agricultural uses for purposes of the Secretary of Agriculture's certification. Process and feedstock uses only are certified for agricultural chemicals and animal feeds and food, as in the Interim Final Rule, pursuant to the directive in Section 401(f)(2) of the NGPA. The responsibility for implementing the new alternative fuels determination is assigned by Section 401(b) to the FERC, in consultation with the USDA.

The USDA Final Rule retains the languange of the Interim Final Rule in certifying uses on an equal basis within the classes of establishments identified in 7 CRF Section 2900.3, whether such uses are in existence on the effective date of this rule or come into existence thereafter. A new or expanded facility is equally necessary for full food and fiber production as an existing facility. Such facilities are constructed both in response to rising demand for food and natural fiber products and to replace obsolete, less efficient facilities as they are phased out of the production stream.

IV. Impact Analysis

USDA has prepared and filed with the Environmental Protection Agency, a Final Economic and Environmental Impact Statement (EEIS). The 30-day review period has been waived consistent with 40 CFR Section 1506.10(b)(2) which provides for publishing ". . . a decision on the final rule simultaneously with the publication of the notice of availability of the final environmental impact statement . . .", when rulemaking under the Administrative Procedures Act is involved. The Final EEIS assesses the economic and environmental consequences of alternative curtailment plans. Impacts on agriculture, affected industries, air quality, water quality, and biological resources are discussed. The estimates of volumes of natural gas affected by the USDA certification of essential agricultural uses were developed as maxima, with FERC not removing any natural gas from the agricultural priority via Section 401(b). The analysis in the Final EEIS found that the volumes affected under any of the options considered by the USDA are negligible when comparing increased natural gas use by agriculture with total use. The actual impact of the agricultural priority is indeterminate, as actions by FERC pursuant to Section 401(b) may reduce the volumes protected by the agricultural priority.

Single copies of the Final EEIS may be requested from USDA Office of Energy, Room 5173 South Agricultural Building, 12th and Independence Avenue, SW., Washington, DC 20250. The Final EEIS fully meets the requirements of the Council of Environmental Quality regulations for implementing the National Environmental Policy Act, 40 CFR Parts 1500–1508, as well as Executive Order 12044.

Notice is hereby given that the Office of Energy of the U.S. Department of Agriculture has prepared a Final Economic and Environmental Impact Statement in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, in connection with the Final Rule on Certification of Essential Agricultural Uses of Natural Gas pursuant to Section 401 of the Natural Gas Policy Act of 1978.

Additional information may be secured on request, submitted to Dr. Weldon V. Barton, Director, Office of the Secretary, Office of Energy, U.S. Department of Agriculture, Room 5175 South Building, Washington, D.C. 20250. The Final Economic and Environmental Impact Statement may be obtained during regular business hours in Room 5175 South Agricultural Building, 14th and Independence, SW, Washington, D.C. The 30-day review period had been waived consistent with the provisions of the Council on Environmental Quality (EQ) regulations Section 1506.10(b)(2) which provides for publication of the notice of availability of the Final EEIS simultaneously with the Final Rule. This Final Economic and Environmental Impact Statement for the Final Rule on Certification of Essential Agricultural Uses of Natural Gas is effective as of May 14, 1979, the effective date of the Final Rule.

Part 2900 is hereby revised to read as set forth below:

PART 2900—ESSENTIAL AGRICULTURAL USES-NATURAL GAS POLICY ACT

Authority: Pub. L. 95-621, November 9, 1978.

§ 2900.1 General.

Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements, expressed either as volumes or percentages of use, of persons, or classes thereof, for essential agricultural uses in order to meet requirements of full food and fiber production. This rule covers establishments performing functions classed as essential agricultural uses whose natural gas supplies are distributed through the interstate pipeline systems even though such establishments may receive such gas directly from an intrastate pipeline or local distribution company. The rule provides to the Secretary of Energy (for purposes of Section 401(a) of the NGPA) and to the Federal Energy Regulatory Commission the following certifications:

(a) Essential agricultural *uses* of natural gas, expressed as classes of establishments that use gas for essential agricultural purposes; and

(b) Essential agricultural current *requirements* of natural gas, expressed as percentages of use.

§ 2900.2 Definitions.

(a) "Full food and fiber production" means the entire output of food and fiber produced for the domestic market, and for export, for building of reserves, and crops for soil building or conservation. This term also includes the processing of food and fiber into stable and storable products, and the maintenance of food quality after processing.

(b) "Establishment" means an economic unit, generally at a single physical location where business is conducted or where service or industrial operations are performed (for example, a factory, mill, store, mine, farm, sales office, or warehouse). (Note—This is the same definition used in the Standard Industrial Classification Manual, 1972 edition).

(c) "Essential Agricultural Use Establishment" means any Establishment, or the portion of an Establishment, which performs (or has the capability to perform) activities specified in § 2900.3.

(d) "Current Natural Gas Requirements" means the amount of natural gas required by an Essential Agricultural Use Establishment to perform the activities devoted to full food and fiber production.

§ 2900.3 Essential agricultural uses.

For purposes of Section 401(c) of the NGPA the following classes or portions of classes are certified as essential agricultural uses in order to meet the requirements of full food and fiber production:

Essential Agricultural Uses

Industry SIC No. and Industry Description

Food and Natural Fiber Production

01 Agricultural Production—Crops.

02 Agricultural Production—Livestock Excluding 0272—Horses and Other Equines, and Nonfood Portions of 0279—Animal Specialties, Not Elsewhere Classified.

0723 Crop Preparation Services for Market, Except Cotton Ginning (see fiber processing).

4971 Irrigation Systems.

Fertilizer and Agricultural Chemicals

(Process and Feedstock Use Only)

1474 Potash, Soda, and Borate Materials.

1475 Phosphate Rock.

1477 Sulfur.

2819 Industrial Inorganic Chemicals, n.e.c. (Agricultural related only).

2865 Cyclic Crudes and Cyclic Intermediates, Dyes and Organic Pigments (Agricutural related only).

2869 Industrial Organic Chemicals, n.e.c. (Agricutural related only).

287 Agricultural Chemicals.

2899 Chemicals and Chemical Preparations, n.e.c. (salt-food and feed grade only).

3274 Lime (Agricultural lime only).

Food and Natural Fiber Processing-Food

20 Food and Kindred Products Except 2047—Dog, Cat and Other Pet Food, and 2048—Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

Animal Feeds, and Food

(Process and Feedstock Use Only)

2047 Dog, Cat and Other Pet Food.

2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified.

Natural Fiber

0724 Cotton Ginning.

2141 Tobacco Stemming and Redrying.

2299 Textile Goods, n.e.c. (wool tops, combing and converting).

3111 Leather Tanning and Finishing.

Food Quality Maintenance—Food Packaging

2641 Paper Coating and Glazing (food related only).

2643 Bags, Except Textile (food related only).

2645 Die Cut Paper and Paperboard (food related only).

2646 Pressed and Molded Pulp Goods (food related only).

2649 Converted Paper Products (food related only).

2651 Folding Paperboard Boxes (food related only).

2653 Corrugated and Solid Fiber Boxes (food related only).

2654 Sanitary Food Containers.

2655 Fiber Cans, Tubes, Drums, and Similar Products (food related only).

3079 Miscellaneous Plastic Products (food related only).

3221 Glass Containers (food related only).

3411 Metal Cans (food related only).

3497 Metal Foil and Leaf (food related only).

Marketing and Distribution

4221 Farm Product Warehousing and Storage.

4222 Refrigerated Warehousing.

514 Groceries and Related Products.

5153 Farm Product Raw Materials—Grain.

54 Food Stores.

§ 2900.4 Natural gas requirements.

For purposes of Section 401(c), NGPA, the natural gas requirements for each Essential Agricultural Use Establishment, whether such Essential Agricultural Use Establishment is in existence on the effective date of this rule or comes into existence thereafter, are certified to be 100 percent of Current Natural Gas Requirements.

§ 2900.5 Amendments.

This rule may be amended by the Secretary of Agriculture from time to time. In accordance with 7 CFR § 1.28, requests for such amendments may be addressed to the Secretary of Agriculture.

§ 2900.6 Effective date.

This rule shall become effective on May 14, 1979.

Dated: May 10, 1979.

Jim Williams,

Acting Secretary of Agriculture.

[FR Doc. 79-15248, 5-11-79; 3:43 pm]

BILLING CODE 3410-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Rules of Practice and Procedures

Correction

In FR Doc. 79-13288 appearing at page 25412 in the issue for Tuesday, May 1, 1979, the following correction is made. On page 25415, in § 308.6(a), in the 15th through the 17th lines, the words "or a party who elects to file an answer or exceptions," are deleted and reinserted in the 22nd line after the words "answer or exceptions,".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 78-EA-72; Amdt. 39-3471]

14 CFR Part 39

Airworthiness Directives; Canadair Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Canadair CL-44D4 and CL-44J type airplanes, and requires an inspection and replacement where necessary of the end cap of the main landing gear actuator. The purpose of the inspection is to prevent interference with actuation of the main landing gear caused by failure of the end cap.

DATE: May 18, 1979. Compliance is required prior to U.S. airworthiness certification.

ADDRESSES: Canadair Service Bulletins may be acquired from the manufacturer at P.O. Box 6087, Montreal, Canada.

FOR FURTHER INFORMATION CONTACT: F. Lee, Systems & Equipment Section, AEA-213, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-3372.

SUPPLEMENTARY INFORMATION: There had been a report of a failure of the subject end cap resulting in an inability to actuate the main landing gear. The failure of the cap resulted from cracks. Since this deficiency has been corrected in the only two known U.S.-registered airplanes, the rule is effective as to all future applications for U.S. registration and thus, notice and public procedure hereon are unnecessary and the rule may be made effective in less than 30 days since it does not impose a burden on any person.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

CANADAIR: Applies to all Canadair Models CL-44D4 and CL-44J certificated in all categories.

Compliance required prior to application for U.S. registration and airworthiness certification.

To preclude possible failure of the main landing gear actuating system, accomplish the following:

(a) Inspect the end caps of the main landing gear actuator, Jarry Hydraulics, P/N 3650-3 or -7 (Canadair Assembly numbers 44-75129-800 or -802 respectively) for cracks using the dye penetrant method or an FAA approved equivalent inspection.

(b) If cracks are found, replace end cap with a crack free cap prior to next flight.

Effective Date: This amendment is effective May 18, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89)

Issued in Jamaica, New York, on May 4, 1979.

Louis J. Cardinali,

Acting Director, Eastern Region.

[FR Doc. 79-15224 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 73, and 75

Extension of VOR Federal Airway

Correction

In 79-FR Doc. 79-13720 appearing in the issue of Thursday, May 3, 1979 on page 25834, make the following correction. On page 25835 the Docket number should have read, [Docket No. 78-NW-20].

14 CFR Part 97

[Docket No. 19154; Amdt. No. 1138]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:
1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and

Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. § 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

. . . *Effective August 9, 1979*

Frankfort, KY—Capital City, VOR Rwy 24, Amdt. 4
Ashland, WI—John F. Kennedy Memorial, VOR Rwy 2, Amdt. 2
Ashland, WI—John F. Kennedy Memorial, VOR Rwy 31, Amdt. 2
Rhinelander, WI—Rhinelander-Onieda County, VOR Rwy 9, Original

. . . *Effective July 12, 1979*

Rogers, AR—Rogers Muni Arpt-Carter Field, VOR Rwy 1, Amdt. 7
Rogers, AR—Rogers Muni Arpt-Carter Field, VOR/DME Rwy 19, Amdt. 4
Muscatine, IA—Muscatine Muni, VOR/DME-A, Amdt. 3
Newton, KS—Newton City-County, VOR/DME Rwy 35, Amdt. 5

. . . *Effective June 28, 1979*

Thomasville, GA—Thomasville Municipal, VOR Rwy 22, Amdt. 7
Thomasville, GA—Thomasville Municipal, VOR/DME Rwy 22, Amdt. 1
Westminster, MD—Westminster, VOR Rwy 34, Amdt. 1
Drew, MS—Ruleville Drew, VOR-A, Amdt. 2
Manchester, NH—Manchester Airport/Grenier Industrial Airpark, VOR Rwy 35, Amdt. 11
Mount Holly, NJ—Burlington County Airpark, VOR Rwy 26, Original
Mount Holly, NJ—Burlington County Airpark, VOR-A, Amdt. 1, cancelled
Smithville, NJ—Smithsville Airfield, VOR-B, Original
Toms River, NJ—Robert J. Miller Air Park, VOR Rwy 6, Amdt. 5
Toms River, NJ—Robert J. Miller Air Park, VOR Rwy 24, Original
McMinnville, OR—McMinnville Municipal, VOR/DME-A, Amdt. 2
McMinnville, OR—McMinnville Municipal, VOR/DME-B, Amdt. 1
Monongahela, PA—Rostraver, VOR-A, Amdt. 2
Pittsburgh, PA—Campbell, VOR Rwy 31, Amdt. 2
Darlington, SC—Darlington County, VOR/DME-A, Amdt. 6
Marion, SC—Marion County, VOR/DME-A, Amdt. 3
Aberdeen, SD—Aberdeen Regional, VOR Rwy 31, Amdt. 15
Aberdeen, SD—Aberdeen Regional, VOR/DME or TACAN Rwy 13, Amdt. 7
Big Spring, TX—Big Spring, VOR Rwy 17L, Amdt. 1
Big Spring, TX—Big Spring, VOR Rwy 35R, Amdt. 1
Berkeley Springs, WV—Potomac Airpark, VOR Rwy 29, Amdt. 2
LaCrosse, WI—LaCrosse Municipal, VOR Rwy 13, Amdt. 19

. . . *Effective June 14, 1979*

Honolulu HI—Honolulu International, VOR Rwy 8L (TAC), Amdt. 14
Honolulu HI—Honolulu International, VOR Rwy 8R (TAC), Amdt. 1
Grand Haven, MI—Grand Haven Memorial Park, VOR-A, Amdt. 9

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

. . . *Effective July 12, 1979*

Harrison, AR—Boone County, LOC Rwy 36, Original
Ft. Lauderdale, FL—Ft. Lauderdale-Executive, LOC Rwy 8, Original

. . . *Effective June 28, 1979*

New Orleans, LA—New Orleans International (Moisant Field), LOC BC Rwy 28, Amdt. 10, cancelled
Kirksville, MO—Clarence Cannon Memorial, LOC Rwy 36, Amdt. 2
Fargo, ND—Hector Field, LOC BC Rwy 17, Amdt. 8
Middletown, PA—Harrisburg International Airport Olmsted Field, LOC BC Rwy 31, Amdt. 5

. . . *Effective June 14, 1979*

Medford, OR—Medford-Jackson County, LOC/DME BC B, Amdt. 3
Anderson, SC—Anderson County, LOC Rwy 5, Original
Houston, TX—Houston Intercontinental, LOC/DME BC Rwy 32, Amdt. 4, cancelled

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

. . . *Effective August 9, 1979*

Frankfort, KY—Capital City, NDB Rwy 24, Amdt. 5
Ashland, WI—John F. Kennedy Memorial, NDB Rwy 2, Amdt. 6

. . . *Effective July 12, 1979*

Harrison, AR—Boone County, NDB Rwy 36, Original
Ft. Lauderdale, FL—Ft. Lauderdale-Executive, NDB Rwy 8, Amdt. 3
Cairo, IL—Cairo, NDB Rwy 20, Amdt. 4
Shelbyville, IL—Shelby County, NDB Rwy 36, Amdt. 2

Muscatine, IA—Muscatine Muni, NDB Rwy 5, Amdt. 6
Newton, KS—Newton City-County, NDB Rwy 17, Amdt. 4
Ontonagon, MI—Ontonagon County, NDB-A, Amdt. 2
Grand Marais, MN—Devil's Track Municipal, NDB Rwy 27, Amdt. 6
Festus, MO—Festus Memorial, NDB Rwy 36, Amdt. 1
Enid, OK—Enid Woodring Muni, NDB Rwy 35, Original

. . . Effective June 28, 1979

Thomasville, GA—Thomasville Municipal, NDB Rwy 22, Amdt. 3
Clarksdale, MS—Fletcher Field, NDB Rwy 18, Amdt. 4
Clarksdale, MS—Fletcher Field, NDB Rwy 36, Amdt. 4
Manchester, NH—Manchester Airport/Grenier Industrial Airpark, NDB Rwy 35, Amdt. 10
Newark, NJ—Newark Intl., NDB Rwy 4L, Amdt. 6
Newark, NJ—Newark Intl., NDB Rwy 4R, Amdt. 2
Hatteras, NC—Billy Mitchell, NDB Rwy 6, Amdt. 3
Bowman, ND—Bowman Municipal, NDB Rwy 11, Amdt. 1
Bowman, ND—Bowman Municipal, NDB Rwy 29, Amdt. 1
Fargo, ND—Hector Field, NDB Rwy 17, Amdt. 9
Hillsboro, OR—Portland-Hillsboro, NDB-B, Original
Redmond, OR—Roberts Field, NDB Rwy 22, Original

. . . Effective June 14, 1979

Honolulu, HI—Honolulu International, NDB Rwy 8L, Amdt. 13
West Yellowstone, MT—Yellowstone, NDB Rwy 1, Amdt. 2

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

. . . Effective June 28, 1979

Groton (New London), CT—Trumball, ILS Rwy 5, Amdt. 4
Washington, DC—Washington National, ILS Rwy 36, Amdt. 30
New Orleans, LA—New Orleans International (Moisant Field), ILS Rwy 28, Original
Baltimore, MD—Baltimore-Washington Int'l., ILS Rwy 28, Amdt. 3
Baltimore, MD—Baltimore-Washington Int'l., ILS Rwy 33L, Amdt. 1
Manchester, NH—Manchester Airport/Grenier Industrial Airpark, ILS Rwy 35, Amdt. 9
Newark, NJ—Newark Intl., ILS Rwy 4L, Amdt. 6
Newark, NJ—Newark Intl., ILS Rwy 4R, Amdt. 3
Hillsboro, OR—Portland-Hillsboro, ILS Rwy 12, Amdt. 4
Middletown, PA—Harrisburg International Airport Olmsted Field, ILS Rwy 13, Amdt. 6

. . . Effective June 14, 1979

Honolulu, HI—Honolulu International, ILS Rwy 8L, Amdt. 13
Minneapolis, MN—Minneapolis-St. Paul Intl. (Wold Chamberlain), ILS Rwy 11R, Original
Minneapolis, MN—Minneapolis-St. Paul Intl. (Wold Chamberlain), ILS BC Rwy 11R, Amdt. 6, cancelled
West Yellowstone, MT—Yellowstone, ILS Rwy 1, Amdt. 2
Medford, OR—Medford-Jackson County, ILS Rwy 14, Amdt. 10
Houston, TX—Houston Intercontinental, ILS Rwy 32, Original

. . . Effective May 2, 1979

New York, NY—LaGuardia, ILS Rwy 22, Amdt. 14

5. By amending § 97.31 RADAR SIAPs identified as follows:

. . . Effective August 9, 1979

Charlotte, NC—Douglas Municipal, RADAR-1, Amdt. 14

. . . Effective June 28, 1979

Fairbanks, AK—Fairbanks Intl., RADAR-1, Original
Sarasota (Bradenton), FL—Sarasota-Bradenton, RADAR-1, Amdt. 2
Houston, TX—William P. Hobby, RADAR-1, Amdt. 2, cancelled.

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . Effective July 12, 1979

Ft. Lauderdale, FL—Ft. Lauderdale-Executive, RNAV Rwy 6, Amdt. 1
Coffeyville, KS—Coffeyville Municipal, RNAV Rwy 35, Original
Newton, KS—Newton City-County, RNAV Rwy 17, Amdt. 1
Newton, KS—Newton City-County, RNAV Rwy 35, Amdt. 1

. . . Effective June 28, 1979

Thomasville, GA—Thomasville Municipal, RNAV Rwy 32, Amdt. 1
St. Louis, MO—Spirit of St. Louis, RNAV Rwy 25, Original
Hillsboro, OR—Portland-Hillsboro, RNAV Rwy 20, Amdt. 2, cancelled
Greenville, TX—Majors Field, RNAV Rwy 35, Original

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on May 11, 1979.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

James M. Vines,
Chief, Aircraft Programs Division.

[FR Doc. 79-15381 Filed 5-16-79; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM79-18; Order No. 28]

18 CFR Part 157

Regulations Under the Natural Gas Act; Certification of Pipeline Transportation for Certain High Priority Uses; Correction

April 26, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Erratum Notice.

SUMMARY: This notice contains a correction to § 157.102 of the Federal Energy Regulatory Commission's regulations regarding certification of pipeline transportation for certain high priority uses.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 (202) 275-4166.

SUPPLEMENTARY INFORMATION: In the Final Rule issued April 23, 1979, entitled Certification of Pipeline Transportation for Certain High Priority Uses (44 FR 24825, April 27, 1979) at 44 FR 24829, in § 157.102(a)(2), reference to "§§ 281.103(b) (2) and (3)" should be corrected to read "§§ 281.103(a) (11) and (12)".

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15382 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 79-145]

Certain Castor Oil Products From Brazil—Declaration of Net Amount of Bounty or Grant

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Net Amount of Bounty or Grant Declared.

SUMMARY: This notice is to advise the public of the new rate of countervailing duty applicable to imports of hydrogenated castor oil and 12 hyroxystearic acid from Brazil. Based upon a review of information received, the net amount of benefits given by the Government of Brazil which constitute bounties or grants within the meaning of the countervailing duty law upon the manufacture, production, or exportation of hydrogenated castor oil or 12 hydroxystearic acid has been determined to be 9.6 percent of the f.o.b. or ex-works price to the United States. Accordingly, effective today, hydrogenated castor oil and 12 hydroxystearic acid from Brazil will be subject to countervailing duty in accordance with this declaration.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-2323.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 16, 1976 (41 FR 11018), a notice, T.D. 76-80, was published stating that it had been determined that exports of hydrogenated castor oil and 12 hydroxystearic acid from Brazil received bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

At that time, notice was given that hydrogenated castor oil or hydroxystearic acid, imported directly or indirectly from Brazil, if entered for consumption or withdrawn from warehouse for consumption on or after March 16, 1976, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. In accordance with section 303 of the Act and based on the information then available, the net amount of bounties or grants was determined to be 11.3 percent of f.o.b. or ex-works price to the United States.

On January 24, 1979, the Government of Brazil announced that it would undertake a four-year program to eliminate its export payments, in the form of IPI credits, which have been determined by the Treasury to constitute bounties or grants. A reduction of 10 percent of the total value of these credits was made at that time, and an additional 5 percent reduction occurred on March 31, 1979. Further cuts of 5 percent each will be made quarterly until the entire value of these credits is completely eliminated by June 30, 1983. The Treasury will adjust the countervailing duty rate in the future to reflect these quarterly changes.

On the basis of these actions taken by the Government of Brazil to reduce the amount of IPI credits paid to exporters of the subject merchandise, it has been ascertained and determined that the net amount of benefits paid or bestowed, directly or indirectly, by the Government of Brazil on the exportation of hydrogenated castor oil and 12 hydroxystearic acid is 9.6 percent.

Accordingly, effective on May 17, 1979, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable hydrogenated castor oil or 12 hydroxystearic acid, imported directly or indirectly from Brazil which benefit from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this declaration shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such hydrogenated castor oil or 12 hydroxystearic acid from Brazil.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "certain castor oil products" under the country heading "Brazil", the number of this Treasury Decision in the column so headed and the words "New rate" in the column headed "Action".

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; (19 U.S.C. 66, 1303), as amended, 1624).

Robert H. Mundheim,

General Counsel of the Treasury.

May 10, 1979.

[FR Doc. 79-15441 Filed 5-16-79; 8:45 am]

BILLING CODE 4810-22-M

19 CFR Part 159

[T.D. 79-146]

Cotton Yarn From Brazil—Declaration of Net Amount of Bounty or Grant

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Net Amount of Bounty or Grant Declared.

SUMMARY: This notice is to advise the public of the new rate of countervailing duty applicable to imports of cotton yarn from Brazil. Based upon a review of information received, the net amount of benefits given by the Government of Brazil which constitute bounties or grants within the meaning of the countervailing duty law upon the manufacture, production, or exportation of cotton yarn has been determined to be 17.0 percent of the f.o.b. or ex-works price to the United States. Accordingly, effective today, cotton yarn from Brazil will be subject to countervailing duty in accordance with this declaration.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-2323.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 21, 1977 (42 FR 31449), a notice, T.D. 77-161, was published stating that it had been determined that exports of cotton yarn from Brazil received bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

At that time, notice was given that cotton yarn, imported directly or indirectly from Brazil, if entered for consumption or withdrawn from warehouse for consumption on or after June 21, 1977, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. In accordance with section 303 of the Act and based on the information then available, the net amount of bounties or grants was determined to be 19.6 percent of f.o.b. or ex-works price to the United States.

On January 24, 1979, the Government of Brazil announced that it would undertake a four-year program to eliminate its export payments, in the form of IPI credits, which have been determined by the Treasury to constitute bounties or grants. A reduction of 10 percent of the total value of these credits was made at that time, and an additional 5 percent reduction occurred on March 31, 1979. Further cuts of 5 percent each will be made quarterly until the entire value of these credits is completely eliminated by June 30, 1983. The Treasury will adjust the countervailing duty rate in the future to reflect these quarterly changes.

On the basis of these actions taken by the Government of Brazil to reduce the amount of IPI credits paid to exporters of the subject merchandise, it has been ascertained and determined that the net amount of benefits paid or bestowed, directly or indirectly, by the Government of Brazil on the exportation of cotton yarn is 17.0 percent.

Accordingly, effective on May 17, 1979, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable cotton yarn, imported directly or indirectly from Brazil which benefit from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this declaration shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such cotton yarn from Brazil.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "cotton yarn" under the country heading "Brazil," the number of this Treasury Decision in the column so headed and the words "New rate" in the column headed "Action."

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; (19 U.S.C. 66, 1303), as amended, 1624).

Robert H. Mundheim,

General Counsel of the Treasury.

May 10, 1979.

[FR Doc. 79-15442 Filed 5-16-79; 8:45 am]

BILLING CODE 4810-22-M

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19 CFR Part 159

[T.D. 79-147]

Non-Rubber Footwear From Brazil—Declaration of Net Amount of Bounty or Grant

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Net Amount of Bounty or Grant Declared.

SUMMARY: This notice is to advise the public of the new rate of countervailing duty applicable to imports of non-rubber footwear from Brazil. Based upon a review of information received, the net amount of benefits given by the Government of Brazil which constitute bounties or grants within the meaning of the countervailing duty law upon the manufacture, production, or exportation of non-rubber footwear has been determined to be 10.6 percent of the f.o.b. or ex-works price to the United States of shoes manufactured by firms whose export sales account for 40 percent or less of the value of their total sales and 4.1 percent of the f.o.b. or ex-works price to the United States of shoes manufactured by firms whose export sales account for more than 40 percent of the value of their total sales. Accordingly, effective today, non-rubber footwear from Brazil will be subject to countervailing duty in accordance with this declaration.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-2323.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 12, 1974 (39 FR 32903), a notice, T.D. 74-233, was published stating that it had been determined that exports of non-rubber footwear from Brazil received bounties or grants within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303).

At that time, notice was given that non-rubber footwear, imported directly or indirectly from Brazil, if entered for consumption or withdrawn from warehouse for consumption on or after October 25, 1974, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. In accordance with section 303 of the Act and based on the information then available, the net amount of bounties or grants was determined to be 12.3 percent of f.o.b. or ex-works price to the United States of shoes manufactured by firms whose export sales account for 40 percent or less of the value of their total sales and 4.8 percent of the f.o.b. or ex-works price to the United States of shoes manufactured by firms whose export sales account for more than 40 percent of the value of their total sales.

On January 24, 1979, the Government of Brazil announced that it would undertake a four-year program to eliminate its export payments, in the form of IPI credits, which have been determined by the Treasury to constitute bounties or grants. A reduction of 10 percent of the total value of these credits was made at that time, and an additional 5 percent reduction occurred on March 31, 1979. Further cuts of 5 percent each will be made quarterly until the entire value of these credits is completely eliminated by June 30, 1983. The Treasury will adjust the countervailing duty rate in the future to reflect these quarterly changes.

On the basis of these actions taken by the Government of Brazil to reduce the amount of IPI credits paid to exporters of the subject merchandise, it has been ascertained and determined that the net amount of benefits paid or bestowed, directly or indirectly, by the Government of Brazil on the exportation of non-rubber footwear is 10.6 percent for the former category described above and 4.1 percent for the latter category described above.

Accordingly, effective on May 17, 1979, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable non-rubber footwear, imported directly or indirectly from Brazil which benefit from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this declaration shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such non-rubber footwear from Brazil.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "non-rubber footwear" under the country heading "Brazil", the number of this Treasury Decision in the column so headed and the words "New rate" in the column headed "Action."

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; (19 U.S.C. 66, 1303), as amended, 1624).

Robert H. Mundheim,

General Counsel of the Treasury.

May 10, 1979.

[FR Doc. 79-15443 Filed 5-16-79; 8:45 am]

BILLING CODE 4810-22-M

19 CFR Part 159

[T.D. 79-148]

Scissors and Shears From Brazil—Declaration of Net Amount of Bounty or Grant

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Net Amount of Bounty or Grant Declared.

SUMMARY: This notice is to advise the public of the new rate of countervailing duty applicable to imports of scissors and shears from Brazil. Based upon a review of information received, the net amount of benefits given by the Government of Brazil which constitute bounties or grants within the meaning of the countervailing duty law upon the manufacture, production, or exportation of scissors and shears has been determined to be 13.8 percent of the f.o.b. or ex-works price to the United States. Accordingly, effective today, scissors and shears from Brazil will be subject to countervailing duty in accordance with this declaration.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-2323.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 21, 1977 (42 FR 31449), a notice, T.D. 77-162, was published stating that it had been determined that exports of scissors and shears from Brazil received bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

At that time, notice was given that scissors and shears, imported directly or indirectly from Brazil, if entered for consumption or withdrawn from warehouse for consumption on or after February 11, 1977, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. In accordance with section 303 of the Act and based on the information then available, the net amount of bounties or grants was determined to be 15.8 percent of f.o.b. or ex-works price to the United States.

On January 24, 1979, the Government of Brazil announced that it would undertake a four-year program to eliminate its export payments, in the form of IPI credits, which have been determined by the Treasury to constitute bounties or grants. A reduction of 10 percent of the total value of these credits was made at that time, and an additional 5 percent reduction occurred on March 31, 1979. Further cuts of 5 percent each will be made quarterly until the entire value of these credits is completely eliminated by June 30, 1983. The Treasury will adjust the countervailing duty rate in the future to reflect these quarterly changes.

On the basis of these actions taken by the Government of Brazil to reduce the amount of IPI credits paid to exporters of the subject merchandise, it has been ascertained and determined that the net amount of benefits paid or bestowed, directly or indirectly, by the Government of Brazil on the exportation of scissors and shears is 13.8 percent.

Accordingly, effective on May 17, 1979, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable scissors and shears, imported directly or indirectly from Brazil which benefit from such bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the terms of this declaration shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such scissors and shears from Brazil.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "scissors and shears" under the country heading "Brazil," the number of this Treasury Decision in the column so headed and the words "New rate" in the column headed "Action."

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; (19 U.S.C. 66, 1303), as amended, 1624).

Robert H. Mundheim,

General Counsel of the Treasury.

May 10, 1979.

[FR Doc. 79-15444 Filed 5-16-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration and Federal Highway Administration

23 CFR Ch. II

Chapter Heading Change

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Rule.

SUMMARY: This Notice changes the heading of Chapter II of Title 23, Code of Federal Regulations.

EFFECTIVE DATE: May 15, 1979.

ADDRESS: NHTSA, 400 7th Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Philip R. Hertz, Office of the Chief Counsel, NHTSA, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-1834.

SUPPLEMENTARY INFORMATION: The heading of Chapter II of Title 23, Code of Federal Regulations is presently: "Title II—Highway Safety Program Standards, Department of Transportation." Since it was first published, Chapter II has been amended to include material other than the Highway Safety Program Standards. To make the heading of Chapter II more consistent with its content, this notice deletes the reference to the highway safety program standards and replaces it with a reference to the administering agencies, in keeping with the conventional practice of the CFR.

In consideration of the foregoing, the heading of Chapter II, Title 23, Code of Federal Regulations is amended to read as follows:

CHAPTER II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Issued on: May 10, 1979.

(23 U.S.C. 315, 401, 402; 49 CFR 1.48(b), 1.50(b))

Joan Claybrook,

Administrator, National Highway Traffic Safety Administration.

Karl S. Bowers,

Administrator, Federal Highway Administration.

[FR Doc. 79-15094 Filed 5-17-79; 8:45 am]

BILLING CODE 4910-59-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1915

[Docket No. 5482]

List of Withdrawal of Flood Insurance Maps Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.[1]

ACTION: Final rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Federal Insurance Administration, have been temporarily withdrawn for administrative or technical reason. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATES: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: This list includes the date that each map was withdrawn, and the effective date of its republication, if it has been republished. If a flood prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, requires, at Section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) For acquisition and construction of buildings, and

(2) For buildings located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction of buildings in these areas unless the community has entered the program. The denial of such financial assistance has no application outside of the identified special flood hazard areas of such flood-prone communities.

Prior to July 1, 1975, the statutory requirement for the purchase of flood insurance did not apply until and unless the community entered the program and the special flood hazard areas were identified by the issuance of a flood insurance map. However, after July 1, 1975, or one year after identification, whichever is later, the requirement applies to all communities in the United States that are identified as having special flood hazard areas within their community boundaries, so that, no such financial assistance can legally be provided for buildings in these areas unless the community has entered the program.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Insurance Administation's (FIA's) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FIA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new applications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 24 CFR Part 1909 et seq.)

As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication. Accordingly, Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended as follows:

1. Present § 1915.6 is revised to read as follows:

§ 1915.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).* The following is a cumulative list of withdrawals pursuant to this Part: 40 FR 5149; 40 FR 17015; 40 FR 20798; 40 FR 46102; 40 FR 53579; 40 FR 56672; 41 FR 1478; 41 FR 50990; 41 FR 13352; 41 FR 17726; 42 FR 8895; 42 FR 29433; 42 FR 46226; 42 FR 64076; 43 FR 24019; 44 FR 815; 44 FR 6383; 44 FR 18485; 44 FR 25636; 44 FR ——.

(b) *Flood Insurance Rate Maps (FIRM's).* The following is a cumulative list of withdrawals pursuant to this Part: 40 FR 17015; 41 FR 1478; 42 FR 49811; 42 FR 64076; 43 FR 24019; 44 FR 25636.

2. The following additional entries (which will not appear in the Code of Federal Regulations) are made Pursuant to § 1915.6:

State, community name, and number	County	Hazard ID date	Rescission date	Reason
California, Compton, City, 060111C	Los Angeles	4-23-76	3-30-79	1A
Kansas, Hoyt, City, 200142C	Jackson	12-20-74	3-30-79	1A
Minnesota, Bellingham, City, 270684C	Lac Qui	8-27-76	3-30-79	1A
Nebraska, Adams, Vil, 310069	Gage	11-8-74	3-30-79	1
Nebraska, Arapahoe, City, 310340	Furnas	4-1-77	3-30-79	1
Nebraska, Cairo, Vil, 310101	Hall	12-12-75	3-30-79	1
Nebraska, Callaway, Vil, 310353	Custer	9-19-75	3-30-79	1
Nebraska, Carroll, Vil, 310257	Wayne	1-31-75	3-30-79	1
Nebraska, Cook, Vil, 310123	Johnson	11-28-75	3-30-79	1
Nebraska, Clarkson, City, 310359	Colfax	1-17-75	3-30-79	1
Nebraska, Davenport, Vil, 310267	Thayer	7-11-75	3-30-79	1
Nebraska, Oakland, City, 310023	Burt	6-11-76	3-30-79	1
Nebraska, Dawson, Vil, 310268	Richardson	7-11-75	3-30-79	1
Nebraska, DeWeese, Vil, 310041	Clay	11-8-74	3-30-79	1
Nebraska, Elwood, Vil, 310365	Gosper	9-5-75	3-30-79	1
Nebraska, Ewing, Vil, 310114	Holt	5-14-76	3-30-79	1
Nebraska, Giltner, Vil, 310278	Hamilton	4-25-75	3-30-79	1
Nebraska, Greenwood, Vil, 310374	Cass	9-26-75	3-30-79	1
Nebraska, Haigler, Vil, 310281	Dundy	8-15-75	3-30-79	1
Nebraska, Holbrook, Vil, 310287	Furnas	7-11-75	3-30-79	1
Nebraska, Lewellen, Vil, 310097	Garden	1-10-75	3-30-79	1
Nebraska, Lyons, City, 310013	Burt	12-26-74	3-30-79	1
Nebraska, Malmo, Vil, 310200	Saunders	12-27-74	3-30-79	1
Nebraska, Merna, Vil, 310302	Custer	5-2-75	3-30-79	1
Nebraska, Nickerson, Vil, 310070	Dodge	1-23-74	3-30-79	1
Nebraska, Ong, Vil, 310044	Clay	11-8-74	3-30-79	1
Nebraska, Palmer, Vil, 310307	Merrick	6-27-75	3-30-79	1
Nebraska, Pilger, Vil, 310216	Stanton	12-6-74	3-30-79	1
Nebraska, Raymond, Vil, 310138	Lancaster	12-12-75	3-30-79	1
Nebraska, Rising City, Vil, 310312	Butler	7-11-75	3-30-79	1
Nebraska, Staplehurst, VA 310322	Seward	1-10-75	3-30-79	1
Nebraska, Stapleton, Vil, 310323	Logan	2-21-75	3-30-79	1
Nebraska, Stella, Vil, 310324	Richardson	7-11-75	3-30-79	1

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

State, community name, and number	County	Hazard ID date	Rescission date	Reason
Nebraska, Talmage, Vil, 310167	Otoe	11-7-75	3-30-79	1
Nebraska, Tecumseh, City, 310127	Johnson	12-5-75	3-30-79	1
Nebraska, Verdon, Vil, 310330	Richardson	9-26-75	3-30-79	1
Nebraska, Wausa, Vil, 310405	Knox	8-8-75	3-30-79	1
Nebraska, Winside, Vil, 310336	Wayne	7-18-75	3-30-79	1
Nebraska, Wynot, Vil, 310337	Cedar	4-25-75	3-30-79	1
Oklahoma, Alva City, 400341C	Woods	11-28-75	3-30-79	1A
Pennsylvania, Ingram, Boro, 420045C	Allegheny	11-5-76	3-30-79	1A
Pennsylvania, Castle Shannon, Boro, 420020C	Allegheny	6-28-74	3-30-79	1A
Texas, Orange Grove, City, 480395C	Jim Wells	2-6-76	3-30-79	1A
Virginia, Branchville, TN, 510296C	Southampton	11-15-74	3-30-79	1A
Arkansas, Black Oak, TN, 050389C	Craighead	2-21-75	4-15-79	1A
Arkansas, Truman, City, 050176B, C	Poinsett	12-19-75	4-15-79	1A
Arkansas, Osceola, City, FIRM	Mississippi	6-30-76		(1)
California, Brentwood, City, 060439C	Contra Costa	2-7-75	4-15-79	1A
California, Commerce, City, 060110A, C	Los Angeles	6-28-74	4-15-79	1A
California, Monte Sereno, City, 060345B, C	Santa Clara	3-7-75	4-15-79	1A
California, Lakewood, City, 060130A, C	Los Angeles	10-24-75	4-15-79	1A
California, Pico Rivera, City, 060148A, C	Los Angeles	12-5-75	4-15-79	1A
California, Rosemead, City, 060153A, C	Los Angeles	12-5-75	4-15-79	1A
California, South Gate, City, 060163A, C	Los Angeles	10-17-75	4-15-79	1A
Colorado, Georgetown, TN, 080035	Clear Creek	9-29-78	3-23-79 (FIRM)	
Iowa, West Point, City, 190683C	Lee	7-30-76	4-15-79	1A
Kansas, Attica, City, 200127C	Harper	10-31-75	4-15-79	1A
Louisiana, Livingston, City, 220118E	Livingston	12-27-77	4-15-79	1A
Missouri, Odessa, City, 290669C	Lafayette	7-2-75	4-11-79	1A
Minnesota, Dodge County, 27054BA, C		3-11-77	4-15-79	1A
Missouri, Kimberling, City, 290432A, C	Stone	2-4-75	4-15-79	1A
New Mexico, Cloudcroft, Vil, 350111	Otero	6-27-75	4-10-79	1
New Mexico, Columbus, Vil, 350037	Luna	12-13-74	4-10-79	1
New Mexico, Des Moines, Vil, 350100	Union	7-11-75	4-10-79	1
New Mexico, Floyd, Vil, 350103	Roosevelt	4-30-76	4-15-79	1
New Mexico, Mosquero, Vil, 350107	Harding	7-9-76	4-10-79	1
New Mexico, Vaughn, TN, 350118	Guadalupe	7-9-76	4-10-79	1
New Mexico, Wagon Mound, Vil, 350119	Mora	4-9-76	4-10-79	1
New Mexico, Willard, Vil, 350109	Torrance	9-5-75	4-10-79	1
Oregon, Sutherlin, City, 410275	Douglas	2-20-79	4-10-79	1
Pennsylvania, Springfield, Twp, 421369A	Erie	1-1-75	4-10-79	3
Pennsylvania, Irwin, Twp, 422534	Verago	1-31-75	4-10-79	1
Vermont, Wells River, Vil, 500078	Orange	8-9-74	4-10-79	1
Vermont, North Westminister, Vil, 500140	Windham	1-10-75	4-10-79	3

[1] Map not recorded in Federal Register.

Key to symbols:

E—The community is participating in the Emergency Program. It will remain in the Emergency Program without a FHBM.

C—The community is participating in the Emergency Program. It will be converted to the Regular Program without an FIA map.

R—The community is participating in the Regular Program.

1. The Community appealed its flood-prone designation and FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.

1A. FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.

2. The Flood Hazard Boundary Map (FHBM) contained printing errors or was improperly distributed. A new FHBM will be prepared and distributed.

3. The Community lacked land-use authority over the special flood hazard area.

4. A more accurate FIA map is the effective map for this community.

5. The FHBM does not accurately reflect the Community's special flood hazard areas (i.e., sheet flow flooding, extremely inaccurate map, etc.). A new FHBM will be prepared and distributed.

6. The Flood Insurance Rate Map was rescinded because of inaccurate flood evaluations contained on the map.

7. The Flood Insurance Rate Map was rescinded in order to re-evaluate the mudslide hazard in this Community.

8. The T&E or H&E Map was rescinded.

9. A revision of the FHBM within a reasonable period of time was not possible. A new FHBM will be prepared and distributed.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 4, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc 79–15088 Filed 5–16–79; 8:45 am]

BILLING CODE 4210–23–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 20

[T.D. 7623]

Income Tax; Estate and Gift Taxes; Group-Term Life Insurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to group-term life insurance purchased for employees. Questions have arisen concerning the tax treatment of insurance provided employees under policies that include permanent benefits. These regulations help employers and others determine when insurance is group-term life insurance the cost of which may be excludable from the income of insured employees.

DATES: The regulations are generally effective for taxable years beginning on or after January 1, 1977 or January 1, 1978, depending on when the employer entered into an arrangement to provide insurance.

FOR FURTHER INFORMATION CONTACT: John H. Parcell of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T, 202-566-3828, not a toll-free call.

SUPPLEMENTARY INFORMATION

Background

On January 5, 1978, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 79 of the Internal Revenue Code of 1954 (43 FR 976). The proposed amendments also contained nonsubstantive revisions of certain cross-references in the Income Tax Regulations under sections 61 and 6052 of the Code and the Estate Tax Regulations (26 CFR Part 20) under section 2042 of the Code. The amendments were proposed to prescribe rules for the tax treatment of life insurance provided employees under policies that include permanent benefits. A public hearing was held on April 26, 1978. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The preamble to the notice of proposed rulemaking summarizes and explains the proposed amendments. The remainder of this preamble discusses the major comments from the public and changes to the proposed regulations and sets forth additional information required by paragraph 13(c) of Executive Order 12044.

Permanent Benefits

The proposed regulations required that an employee must be able to decline or drop the permanent benefit without affecting the amount of group-term life insurance provided. Approximately 200 comments objected to the effect of this requirement on certain group paid-up life insurance plans. The commenters consider this requirement inappropriate because they believe it is inconsistent with past administrative practice, it would impose additional administrative burdens, it would lead to individual selection, it would discourage employees from purchasing permanent insurance, and it might cause employers to reduce the benefits provided to employees. In addition, the commenters suggested that there is no need for this requirement because the amount included in an employee's income under the proposed regulations is determined without regard to the allocation of premiums in the policy. However, the comments do not establish any significant distinction between policies that do not permit an employee to decline or drop the permanent benefit and other forms of permanent insurance. Therefore, the Treasury decision retains a modified version of this rule. Under the rule in the proposed regulations, if an employee who declines or drops the permanent benefit receives a greater amount of current life insurance than an employee who accepts the permanent benefit, the excess does not qualify under section 79. The Treasury decision modifies this rule to permit the excess to qualify under section 79.

Other Benefits

A similar issue has arisen in connection with benefits other than permanent benefits. The issue, which was not considered in the proposed regulations, is whether an employee can be required to purchase these other benefits to obtain group-term life insurance. It arises because insurance does not qualify under section 79 unless it is provided to a group of employees membership in which is determined on the basis of age, marital status, or factors related to employment. The Treasury decision provides that the purchase of any benefit (other than certain tax-favored employee benefits) is not a factor related to employment. Thus, life insurance generally does not qualify under section 79 if an employee must purchase any other benefit to obtain the insurance. However, participation in an employer's contributory pension, profit-sharing, or accident and health plan is considered a factor related to employment.

Definition of Policy

A number of comments were received on the definition of "policy". The proposed regulations treated as a single policy two or more obligations of an insurer that are interrelated or sold in conjunction. Some comments suggested that the term and permanent portion of a combination policy be treated as separate policies if they are actuarially independent and separate in form. If this suggestion had been adopted, the permanent portion of such a policy would not have been subject to the formula for determining the cost of permanent benefits. This Treasury decision retains a modified version of the rule in the proposed regulations because the Service is unable to determine when obligations that are sold in conjunction are economically independent of each other. The Treasury decision provides that obligations sold in conjunction are a policy and clarifies the meaning of "sold in conjunction". The Treasury decision states that obligations are sold in conjunction when they are offered or available because of the employment relationship.

Different Insurers

A similar issue arose in connection with insurance provided by different insurers. Under the proposed regulations it was not clear whether insurance provided by different insurers could be aggregated for purposes of determining whether the insurance is subject to the special rules applicable to groups of fewer than 10 employees and otherwise satisfies the requirements of the regulations. Several comments pointed out that aggregation is permitted under the current regulations. This issue is more appropriately addressed in connection with the regulations project dealing with evidence of insurability (LR-42-78). Accordingly, this Treasury decision makes it clear that aggregation is still permitted. For the same reason, a number of comments suggesting changes in the rules applicable to groups of fewer than 10 employees are being considered in connection with LR-42-78.

Benefits Available to Employee

A number of comments were received on the definition of "permanent benefit." Some comments suggested limiting permanent benefits to benefits available to the employee. This suggestion is adopted in the Treasury decision.

Amount Treated as Group-Term Life Insurance

The proposed regulations provided that the part of a policy designated as group-term life insurance may not be less than the difference between the total death benefit and the paid-up death benefit under the policy. A number of comments suggested that this rule would result in double taxation of the same death benefit. According to the comments, this could occur because the formula for determining the cost of permanent benefits under a policy is based on the increase in the policy's deemed death benefit. In the early years of the policy, the deemed death benefit may exceed the paid up insurance. The comments suggest that to the extent of this excess the death benefit is subject to a double tax. In response to these comments, the Treasury decision provides that the part of the policy designated as group-term life insurance may not be less than the difference between the total death benefit and the deemed death benefit.

Costs of Permanent Benefits

Many comments related to the amount included in income by employees receiving permanent benefits. These comments suggested that the proposed regulations required employees to include too great an amount in income. Among the changes recommended was an increase in the interest rate assumption used in the formula for determining the cost of permanent benefits. The Service recognizes that the actual cost of permanent benefits varies from insurer to insurer and from policy to policy depending on a number of factors such as expenses, investment experience, mortality assumptions, competition, and marketing considerations. The weight assigned to each factor depends on the judgment of the insurer. Therefore, no formula can determine the exact cost of permanent benefits. Although exactitude is impossible, the Service believes that the cost of the permanent benefits determined under the formula in the regulations is a reasonable approximation of the actual cost of those benefits.

It is true that the proposed regulation assumes a low interest rate, but this rate is used in the standard valuation formula of a significant number of states. Furthermore, as explained in the preamble of the notice, the formula does not include a specific loading factor, but reflects loading through the use of conservative interest and mortality assumptions. Therefore, the Treasury decision does not change the method for determining the cost of permanent benefits. Employers may avoid the effect of the formula by purchasing term and permanent features from different insurers.

Effective Dates

Many comments suggested a deferral of the effective date and more generous transitional rules. The Service published these regulations in proposed form on January 5, 1978. In addition, it announced on November 4, 1976, that it was reconsidering the treatment of group insurance arrangements that include permanent benefits and suspending letter rulings under section

79 with respect to insurance arrangements entered into after that date. Accordingly, the Service believes that the proposed effective date provisions allow insurance companies, employers, and taxpayers adequate time to comply with the amended regulations. The effective date provisions are retained in the Treasury decision with the following modifications.

The proposed regulations prescribed a later effective date and transitional rules for insurance provided under a binding arrangement in effect on November 4, 1976. A number of comments suggested that it was unclear when insurance was provided under a binding arrangement. The Treasury decision determines eligibility for the later effective date and transitional rules by reference to the date on which a plan of group-term life insurance was established. To qualify, insurance must be provided under a plan in effect on November 4, 1976. In addition, the insurer must have actually provided, or entered into a binding contract to provide, insurance under the plan.

The Treasury decision contains a more extensive description of factors related to employment than appeared in the proposed regulations. To the extent this description was not included in the proposed regulations, it does not apply until January 1, 1979.

Additional Information

These regulations are needed to guide the public and government employees responsible for the administration of section 79. The Service has considered the direct and indirect effects of the regulation and has concluded that the regulation may result in an increase in the amount included in the income of employees, a reduction in the amount of insurance provided to employees, or a change in the manner in which insurance is provided to employees.

The Service considered the following alternatives before adopting the rules applicable to policies that include permanent benefits:

(1) A requirement that the term life insurance and the permanent benefit be provided by different insurers;

(2) A requirement that the term life insurance and the permanent benefit be provided under separate policies, but not necessarily by different insurers; and

(3) Elimination of all restrictions on policies that include a permanent benefit if a specified amount is included in income as the cost of the permanent benefit.

The Service believes that the first alternative is more burdensome and the third is legally incorrect. The second alternative is discussed under the heading "Permanent Benefits" and in the preamble of the notice of proposed rulemaking.

The Service considered the following alternative methods of determining the amount includible in income as the cost of permanent benefits:

(1) Determining the cost of term life insurance and subtracting this cost from the total premium to determine the amount of premium allocated to the permanent benefit.

(2) Determining the cost of both the term life insurance and the permanent benefit and allocating the total premium between the two in proportion to their costs.

The Service believes that the method used in the regulations is no more burdensome than the alternative methods that were rejected. In addition, it believes that the formula adopted in this Treasury decision is a more appropriate measure of the cost of permanent benefits than were the allocations approved by the Service before November 4, 1976.

The preceding parts of this preamble evidence Service consideration of the many public comments and respond to the more significant issues raised by those comments. Evaluation of the effectiveness of the regulations after issuance will be based on comments received from offices within the Internal Revenue Service and the Treasury Department, other governmental agencies, State and local governments, and the public.

In some instances, the regulations may require additional reporting and recordkeeping by employers and insurers. For example, in the case of a policy that includes a permanent benefit, additional reporting or recordkeeping may be necessary to—

(1) Determine whether the requirements applicable to policies that include a permanent benefit are satisfied;

(2) Determine the cost of the permanent benefits;

(3) Determine the extent to which the cost of permanent benefits is includible in employees' gross income;

(4) Determine the extent to which policy dividends are includible in employees' gross income; and

(5) Inform employees of amounts includible in income.

Employers may avoid the additional reporting and recordkeeping by purchasing the term insurance and the permanent benefit from different insurers.

Drafting Information

The principal author of this regulation is John H. Parcell of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the regulations

After careful consideration, the proposed amendments to the regulations are adopted subject to clerical changes and the following substantive changes:

1. The last two sentences of the definition of "group of employees" in § 1.79–0 are deleted and the following sentences are added in their place:

Ordinarily the purchase of something other than group-term life insurance is not a factor related to employment. For example, if an employer provides credit life insurance to all employees who purchase automobiles, those employees are not a "group of employees" because membership is not determined solely on the basis of age, marital status, or factors related to employment. On the other hand, participation in an employer's pension, profit-sharing, or accident and health plan is considered a factor related to employment even if employees are required to contribute to the cost of the plan. Ownership of stock in the employer corporation is not a factor related to employment. However, participation in an employer's stock bonus plan may be a factor related to employment and a "group of employees" may include employees who own stock in the employer corporation.

2. The definition of permanent benefit in § 1.79–0 is changed to read as follows:

Permanent benefit. A "permanent benefit" is an economic value extending beyond one policy year (for example, a paid-up or cash surrender value) that is provided under a life insurance policy. However, the following features are not permanent benefits:

(a) A right to convert (or continue) life insurance after group life insurance coverage terminates;

(b) Any other feature that provides no economic benefit (other than current insurance protection) to the employee; or

(c) A feature under which term life insurance is provided at a level premium for a period of five years or less.

3. The definition of "policy" in § 1.79–0 is changed to read as follows:

Policy. The term "policy" includes two or more obligations of an insurer (or its affiliates) that are sold in conjunction. Obligations that are offered or available to members of a group of employees are sold in conjunction if they are offered or available because of the employment relationship. The actuarial sufficiency of the premium charged for each obligation is not taken into account in determining whether the obligations are sold in conjunction. In addition, obligations may be sold in conjunction even if the obligations are contained in separate documents, each document is filed with and approved by the applicable state insurance commission, or each obligation is independent of any other obligation. Thus, a group of individual contracts under which life insurance is provided to a group of employees may be a policy. Similarly, two benefits provided to a group of employees, one term life insurance and the other a permanent benefit, may be a policy, even if one of the benefits is provided only to employees who decline the other benefit.

4. Paragraph (b) of § 1.79–1 is changed to read as follows:

(b) *May group-term life insurance be combined with other benefits.* (1) No part of the life insurance provided under a policy that provides a permanent benefit is group-term life insurance unless—

(i) The policy or the employer designates in writing the part of the death benefit provided to each employee that is group-term life insurance;

(ii) The part of the death benefit that is provided to an employee and designated as the group-term life insurance benefit for any policy year is not less than the difference between the total death benefit provided under the policy and the employee's deemed death benefit (DDB) at the end of the policy year determined under paragraph (d)(3) of this section;

(iii) Employees may elect to decline or drop the permanent benefit; and

(iv) The death benefit designated as group-term life insurance that is provided to any employee is not reduced because of that employee's election to decline or drop the permanent benefit.

(2) The condition of paragraph (b)(1)(iv) of this section is illustrated by the following examples:

Example (1). A policy permits each employee of an employer to purchase units of paid-up whole life insurance. If an employee purchases the paid-up insurance, the policy also provides current life insurance so that a total death benefit of $10,000 is provided to the employee. If the employee does not purchase the paid-up insurance, the policy provides no current life insurance. The policy designates the current life insurance as group-term life insurance. However, none of the current life insurance is group-term life insurance for purposes of section 79 because the current life insurance is reduced if an employee elects to decline or drop the permanent benefit.

Example (2). A policy permits each employee to purchase units of paid-up whole life insurance but provides $10,000 of current life insurance to each employee whether or not the employee purchases the units of paid-up whole life insurance. The current life insurance is group-term life insurance for purposes of section 79 if all other requirements of section 79 are met.

Example (3). A policy permits each employee to purchase a $100 unit of paid-up whole life insurance in each policy year. In the first policy year an employee is insured, the policy provides $10,000 of current life insurance. In each subsequent policy year, the amount of current life insurance provided is reduced by $100 whether or not the employee purchases a unit of paid-up whole life insurance. The current life insurance is group-term life insurance for purposes of section 79 if all other requirements of section 79 are met.

Example (4). The facts are the same as example (3) except that the amount of current life insurance provided to employees who do not purchase the paid-up whole life insurance is not reduced. Thus, these employees received $10,000 of current life insurance in each policy year. The current life insurance is group-term life insurance for purposes of section 79 if all other requirements of section 79 are met.

5. The last sentence of § 1.79–1 (c) (1) is changed to read as follows:

For purposes of this rule, all life insurance provided under policies carried directly or indirectly by the employer is taken into account in determining the number of employees to whom life insurance is provided.

6. The definition of "R" in § 1.79–1 (d) (3) is changed by deleting the words "permanent benefits provided" and substituting in their place the words "benefits provided to the employee".

7. The definition of "D" in § 1.79–1 (d) (5) is changed by adding the words "by the employee" immediately after the word "policy".

8. Paragraph (g) of § 1.79–1 is changed to read as follows:

(g) *Effective date:* Sections 1.79–0 through 1.79–3 apply to insurance provided in employee taxable years beginning on or after January 1, 1977, with the following exceptions:

(1) A different effective date applies if—

(i) The insurance is provided under a plan of group insurance as defined in 26 CFR 1.79–1 (b) (1) (iii) (revised as of April 1, 1979);

(ii) The plan of group-term life insurance was in effect on November 4, 1976; and

(iii) On November 4, 1976, the insurer was providing, or had entered into a binding contract to provide, insurance under the plan of group-term insurance.

In that case, §§ 1.79–0 through 1.79–3 do not apply to insurance provided in employee taxable years beginning before January 1, 1978, that could have been provided under the terms of the plan of group-term life insurance as in effect on November 4, 1976.

(2) A special effective date applies to paragraph (b) (1) (iii) and (iv) of this section if—

(i) The conditions of paragraph (g) (1) (i), (ii), and (iii) of this section are met; and

(ii) The insurance did not satisfy the requirement of paragraph (b) (1) (iii) or (iv) of this section on November 4, 1976.

In that case, paragraph (b) (1) (iii) and (iv) of this section do not apply to insurance provided in employee taxable years beginning before January 1, 1983, that could have been provided under the terms of the plan of group-term life insurance as in effect on November 4, 1976.

(3) The third, fourth, and fifth sentences of the definition of "group of employees" in § 1.79–0 do not apply in taxable years beginning before January 1, 1979.

See 26 CFR 1.79–1 through 1.79–3 (revised as of April 1, 1979) for rules applicable to insurance provided in taxable years beginning before January 1, 1977 (January 1, 1978, if the insurance is described in paragraph (g) (1) of this section).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Approved: April 27, 1979.

Jerome Kurtz,

Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Income Tax Regulations (26 CFR Part 1)

§ 1.79 [Deleted]

Paragraph 1. Section 1.79 is deleted.

Par. 2. A new § 1.79–0 is added and § 1.79–1 is amended. The added and amended provisions read as follows:

§ 1.79–0 Group-term life insurance—definitions of certain terms.

The following definitions apply for purposes of section 79, this section, and §§ 1.79–1, 1.79–2, and 1.79–3.

Carried directly or indirectly. A policy of life insurance is "carried directly or indirectly" by an employer if—

(a) The employer pays any part of the cost of the life insurance directly or through another person; or

(b) The employer or two or more employers arrange for payment of the cost of the life insurance by their employees and charge at least one employee less than the cost of his or her insurance, as determined under Table I of § 1.79–3(d)(2), and at least one other employee more than the cost of his or her insurance, determined in the same way.

Employee. An "employee" is—

(a) A person who performs services if his or her relationship to the person for whom services are performed is the legal relationship of employer and employee described in § 31.3401(c)–1; or

(b) A full-time life insurance salesperson described in section 7701(a)(20); or

(c) A person who formerly performed services as an employee.

A person who formerly performed services as an employee and currently performs services for the same employer as an independent contractor is considered an employee only with respect to insurance provided because of the person's former services as an employee.

Group of employees. A "group of employees" is all employees of an employer, or less than all employees if membership in the group is determined solely on the basis of age, marital status, or factors related to employment. Examples of factors related to employment are membership in a union some or all of whose members are employed by the employer, duties performed, compensation received, and length of service. Ordinarily the purchase of something other than group-term life insurance is not a factor related to employment. For example, if an employer provides credit life insurance to all employees who purchase automobiles, these employees are not a "group of employees" because membership is not determined solely on the basis of age, marital status, or factors related to employment. On the other hand, participation in an employer's pension, profit-sharing or accident and health plan is considered a factor related to employment even if employees are required to contribute to the cost of the plan. Ownership of stock in the employer corporation is not a factor related to employment. However, participation in an employer's stock bonus plan may be a factor related to employment and a "group of employees" may include employees who own stock in the employer corporation.

Permanent benefit. A "permanent benefit" is an economic value extending beyond one policy year (for example, a paid-up or cash surrender value) that is provided under a life insurance policy. However, the following features are not permanent benefits:

(a) A right to convert (or continue) life insurance after group life insurance coverage terminates;

(b) Any other feature that provides no economic benefit (other than current insurance protection) to the employee; or

(c) A feature under which term life insurance is provided at a level premium for a period of five years or less.

Policy. The term "policy" includes two or more obligations of an insurer (or its affiliates) that are sold in conjunction. Obligations that are offered or available to members of a group of employees are sold in conjunction if they are offered or available because of the employment relationship. The actuarial sufficiency of the premium charged for each obligation is not taken into account in determining whether the obligations are sold in conjunction. In addition, obligations may be sold in conjunction even if the obligations are contained in separate documents, each document is filed with and approved by the applicable state insurance commission, or each obligation is independent of any other obligation. Thus, a group of individual contracts under which life insurance is provided to a group of employees may be a policy. Similarly, two benefits provided to a group of employees, one term life insurance and the other a permanent benefit, may be a policy, even if one of the benefits is provided only to employees who decline the other benefit.

§ 1.79-1 Group-term life insurance—general rules.

(a) *What is group-term life insurance?* Life insurance is not group-term life insurance for purposes of section 79 unless it meets the following conditions: (1) It provides a general death benefit that is excludable from gross income under section 101(a).

(2) It is provided to a group of employees.

(3) It is provided under a policy carried directly or indirectly by the employer.

(4) The amount of insurance provided to each employee is computed under a formula that precludes individual selection. This formula must be based on factors such as age, years of service, compensation, or position. This condition may be satisfied even if the amount of insurance provided is determined under a limited number of alternative schedules that are based on the amount each employee elects to contribute. However, the amount of insurance provided under each schedule must be computed under a formula that precludes individual selection.

(b) *May group-term life insurance be combined with other benefits?* (1) No part of the life insurance provided under a policy that provides a permanent benefit is group-term life insurance unless—

(i) The policy or the employer designates in writing the part of the death benefit provided to each employee that is group-term life insurance;

(ii) The part of the death benefit that is provided to an employee and designated as the group-term life insurance benefit for any policy year is not less than the difference between the total death benefit provided under the policy and the employee's deemed death benefit (DDB) at the end of the policy year determined under paragraph (d)(3) of this section;

(iii) Employees may elect to decline or drop the permanent benefit; and

(iv) The death benefit designated as group-term life insurance that is provided to any employee is not reduced because of that employee's election to decline or drop the permanent benefit.

(2) The condition of paragraph (b)(1)(iv) of this section is illustrated by the following examples:

Example (1). A policy permits each employee of an employer to purchase units of paid-up whole life insurance. If an employee purchases the paid-up insurance, the policy also provides current life insurance so that a total death benefit of $10,000 is provided to the employee. If the employee does not purchase the paid-up insurance, the policy provides no current life insurance. The policy designates the current life insurance as group-term life insurance. However, none of the current life insurance is group-term life insurance for purposes of section 79 because the current life insurance is reduced if an employee elects to decline or drop the permanent benefit.

Example (2). A policy permits each employee to purchase units of paid-up whole life insurance but provides $10,000 of current life insurance to each employee whether or not the employee purchases the units of paid-up whole life insurance. The current life insurance is group-term life insurance for purposes of section 79 if all other requirements of section 79 are met.

Example (3). A policy permits each employee to purchase a $100 unit of paid-up whole life insurance in each policy year. In the first policy year an employee is insured, the policy provides $10,000 of current life insurance. In each subsequent policy year, the amount of current life insurance provided is reduced by $100 whether or not the employee purchases a unit of paid-up whole life insurance. The current life insurance is group-term life insurance for purposes of section 79 if all other requirements of section 79 are met.

Example (4). The facts are the same as example (3) except that the amount of current life insurance provided to employees who do not purchase the paid-up whole life insurance is not reduced. Thus, these employees receive $10,000 of current life insurance in each policy year. The current life insurance is group-term life insurance for purposes of section 79 if all other requirements of section 79 are met.

(c) *May a group include fewer than 10 employees?* (1) As a general rule, life insurance provided to a group of employees cannot qualify as group-term life insurance for purposes of section 79 unless, at some time during the calendar year, it is provided to at least 10 full-time employees who are members of the group of employees. For purposes of this rule, all life insurance provided under policies carried directly or indirectly by the employer is taken into account in determining the number of employees to whom life insurance is provided.

(2) The general rule of paragraph (c)(1) of this section does not apply if the following conditions are met:

(i) The insurance is provided to all full-time employees of the employer or, if evidence of insurability affects eligibility, to all full-time employees who provide evidence of insurability satisfactory to the insurer.

(ii) The amount of insurance provided is computed either as a uniform percentage of compensation or on the basis of coverage brackets established by the insurer. However, the amount computed under either method may be reduced in the case of employees who do not provide evidence of insurability satisfactory to the insurer. In general, no bracket may exceed 2½ times the next lower bracket and the lowest bracket must be at least 10 percent of the highest bracket. However, the insurer may establish a separate schedule of coverage brackets for employees who are over age 65, but no bracket in the over-65 schedule may exceed 2½ times the next lower bracket and the lowest bracket in the over-65 schedule must be at least 10 percent of the highest bracket in the basic schedule.

(iii) Evidence of insurability affecting employee's eligibility for insurance or the amount of insurance provided to that employee is limited to a medical questionnaire completed by the employee that does not require a physical examination.

(3) The general rule of paragraph (c)(1) of this section does not apply if the following conditions are met:

(i) The insurance is provided under a common plan to the employees of two or more unrelated employers.

(ii) The insurance is restricted to, but mandatory for, all employees of the employer who belong to or are represented by an organization (such as a union) that carries on substantial activities in addition to obtaining insurance.

(iii) Evidence of insurability does not affect an employee's eligibility for insurance or the amount of insurance provided to that employee.

(4) For purposes of paragraph (c) (2) and (3) of this section, employees are not taken into account if they are denied insurance for the following reasons:

(i) They are not eligible for insurance under the terms of the policy because they have not been employed for a waiting period, specified in the policy, which does not exceed six months.

(ii) They are part-time employees. Employees whose customary employment is for not more than 20 hours in any week, or 5 months in any calendar year, are presumed to be part-time employees.

(iii) They have reached the age of 65.

(5) For purposes of paragraph (c) (1) and (2) of this section, insurance is considered to be provided to an employee who elects not to receive insurance.

(d) *How much must an employee receiving permanent benefits include in income?*—(1) *In general.* If an insurance policy that meets the requirements of this section provides permanent benefits to an employee, the cost of the permanent benefits reduced by the amount paid for permanent benefits by the employee is included in the employee's income. The cost of the permanent benefits is determined under the formula in paragraph (d)(2) of this section.

(2) *Formula for determining cost of the permanent benefits.* In each policy year the cost of the permanent benefits for any particular employee must be no less than:

$X(\mathrm{DDB}_2-\mathrm{DDB}_1)$

where

DDB_2 is the employee's deemed death benefit at the end of the policy year:

DDB_1 is the employee's deemed death benefit at the end of the preceding policy year; and

X is the net single premium for insurance (the premium for one dollar of paid-up whole-life insurance) at the employee's attained age at the beginning of the policy year.

(3) *Formula for determining deemed death benefit.* The deemed death benefit (DDB) at the end of any policy year for any particular employee is equal to:

R/Y

where

R is the net level premium reserved at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the cash value of the policy at the end of that policy year; and

Y is the net single premium for insurance (the premium for one dollar of paid-up whole life insurance) at the employee's age at the end of that policy year.

(4) *Mortality tables and interest rates used.* For purposes of paragraph (d) (2) and (3) of this section, the net level premium reserve (R) and the net single premium (X or Y) shall be based on the 1958 CSO Mortality Table and 4 percent interest.

(5) *Dividends.* If an insurance policy that meets the requirements of this section provides permanent benefits, part or all of the dividends under the policy may be includible in the employee's income. If the employee pays nothing for the permanent benefits, all dividends under the policy that are actually or constructively received by the employee are includible in the employee's income. In all other cases, the amount of dividends included in the employee's income is equal to

$(D+C)-(PI+DI+AP)$

where

D is the total amount of dividends actually or constructively received under the policy by the employee in the current and all preceding taxable years of the employee;

C is the total cost of the permanent benefits for the current and all preceding taxable years of the employee determined under the formulas in paragraph (d) (2) and (6) of this section:

PI is the total amount of premium included in the employee's income under paragraph (d)(1) of this section for the current and all preceding taxable years of the employee;

DI is the total amount of dividends included in the employee's income under this paragraph (d)(5) in all preceding taxable years of the employee; and

AP is the total amount paid for permanent benefits by the employee in the current and all preceding taxable years of the employee.

(6) *Different policy and taxable years.* (i) If a policy year begins in one employee taxable year and ends in another employee taxable year, the cost of the permanent benefits, determined under the formula in paragraph (d)(2) of this section, is allocated between the employee taxable years.

(ii) The cost of permanent benefits for a policy year is allocated first to the employee taxable year in which the policy year begins. The cost of permanent benefits allocated to that policy year is equal to:

$F \times C$

where

F is the fraction of the premium for that policy year that is paid on or before the last day of the employee taxable year; and

C is the cost of permanent benefits for the policy year determined under the formula in paragraph (d)(2) of this section.

(iii) Any part of the cost of permanent benefits that is not allocated to the employee taxable year in which the policy year begins is allocated to the subsequent employee taxable year.

(iv) The cost of permanent benefits for an employee taxable year is the sum of the costs of permanent benefits allocated to that year under paragraph (d)(6) (ii) and (iii) of this section.

(7) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. An employer provides insurance to employee A under a policy that meets the requirements of this section. Under the policy, A who is 47 years old, received $70,000 of group-term life insurance and elects to receive a permanent benefit under the policy. A pays $2 for each $1,000 of group-term life insurance through payroll deductions and the employer pays the remainder of the premium for the group-term life insurance. The employer also pays one-half of the premium specified in the policy for the permanent benefit. A pays the other one-half of the premium for the permanent benefit through payroll deductions. The policy specifies that the annual premium paid for the permanent benefit is $300. However, the amount of premium allocated to the permanent benefit by the formula in paragraph (d)(2) of this section is $350. A is a calendar year taxpayer; the policy year begins on January 1. In 1980, $200 is includible in A's income because of insurance provided by the employer. This amount is computed as follows:

(1) Cost of permanent benefits	$350
(2) Amounts considered paid by A for permanent benefits (½ × $300).	150
(3) Line (1) minus line (2)	200
(4) Cost of $70,000 of group-term life insurance under Table I of § 1.79-3.	336
(5) Cost of $50,000 of group-term insurance under Table I of § 1.79-3.	240
(6) Cost of group-term life insurance in excess of $50,000 (line (4) minus line (5)).	96
(7) Amount considered paid by A for group-term life insurance (70 × $2).	140
(8) Line (6) minus line (7) (but not less than 0)	0
(9) Amount includible in income (line (3) plus line (8)).	200

(e) *What is the effect of state law limits?* Section 79 does not apply to life insurance in excess of the limits under applicable state law on the amount of life insurance that can be provided to an employee under a single contract of group-term life insurance.

(f) *Cross references.* (1) See section 79(b) and § 1.79-2 for rules relating to group-term life insurance provided to certain retired individuals.

(2) See section 61(a) and the regulations thereunder for rules relating to life insurance not meeting the requirements of section 79, this section, or § 1.79-2, such as insurance provided on the life of a non-employee (for example, an employee's spouse), insurance not provided as compensation for personal services performed as an employee, insurance not provided under a policy carried directly or indirectly by the employer, or permanent benefits.

(3) See sections 106 and § 1.106-1 for rules relating to certain insurance that does not provide general death benefits, such as travel insurance or accident and health insurance (including amounts payable under a double indemnity clause or rider).

(g) *Effective date.* Sections 1.79-0 through 1.79-3 apply to insurance provided in employee taxable years beginning on or after January 1, 1977, with the following exceptions:

(1) A different effective date applies if—

(i) The insurance is provided under a plan of group insurance as defined in 26 CFR 1.79-1(b)(1)(iii) (revised as of April 1, 1979);

(ii) The plan of group-term life insurance was in effect on November 4, 1976; and

(iii) On November 4, 1976, the insurer was providing, or had entered into a binding contract to provide, insurance under the plan of group-term life insurance.

In that case, §§ 1.79-0 through 1.79-3 do not apply to insurance provided in employee taxable years beginning before January 1, 1978, that could have been provided under the terms of the plan of group-term life insurance as in effect on November 4, 1976.

(2) A special effective date applies to paragraph (b)(1)(iii) and (iv) of this section if—

(i) The conditions of paragraph (g)(1)(i), (ii), and (iii) of this section are met; and

(ii) The insurance did not satisfy the requirement of paragraph (b)(1)(iii) or (iv) of this section on November 4, 1976.

In that case, paragraph (b)(1)(iii) and (iv) of this section do not apply to insurance provided in employee taxable years beginning before January 1, 1983, that could have been provided under the terms of the plan of group-term life insurance as in effect on November 4, 1976.

(3) The third, fourth, and fifth sentences of the definition of "group of employees" in § 1.79-0 do not apply in taxable years beginning before January 1, 1979.

See 26 CFR 1.79-1 through 1.79-3 (revised as of April 1, 1979) for rules applicable to insurance provided in taxable years beginning before January 1, 1977 (January 1, 1978, if the insurance is described in paragraph (g)(1) of this section).

§ 1.79-2 [Amended]

Par. 3. Paragraph (b)(4)(ii)(*a*) of § 1.79-2 is amended by deleting "paragraph (a)(2) of § 1.79-1" and inserting in its place "section 79(a)".

§ 1.79-3 [Amended]

Par. 4. Section 1.79-3 is amended by deleting "paragraph (a)(2) of § 1.79-1" each time it appears and inserting in its place "section 79(a)".

§ 1.61-2 [Amended]

Par. 5. Paragraph (d)(2)(ii)(*a*) of § 1.61-2 is amended by deleting "group-term life insurance on the employee's life as defined in paragraph (b)(1) of § 1.79-1" and inserting in its place "certain group-term life insurance on the employee's life".

§ 1.6052-1 [Amended]

Par. 6. Paragraph (a)(1) (i) of § 1.6052-1 is amended by deleting "set forth in paragraph (a)(2) of § 1.79-1" and inserting in its place "provided in section 79(a)".

Par. 7. Paragraph (a)(2) of § 1.6052-1 is amended to read as follows:

§ 1.6052-1 Information returns regarding payment of wages in the form of group-term life insurance.

(a) *Requirement of reporting*— * * *

(2) *Definitions.* Terms used in paragraph (a)(1) of this section and in section 79 and the regulations thereunder have the meaning ascribed to them in section 79 and the regulations thereunder.

* * * * *

Par. 8. Paragraph (e) of § 1.6052-2 is amended to read as follows:

§ 1.6052-2 Statements to be furnished employees with respect to wages paid in the form of group-term life insurance.

* * * * *

(e) *Definitions.* Terms used in this section and in section 79 and the regulations thereunder have the meaning ascribed to them in section 79 and the regulations thereunder.

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Estate Tax Regulations (26 CFR Part 20)

Par. 9. Paragraph (c)(6) of § 20.2042-1 is amended by deleting "paragraph (b)(1)(i) and (iii) of § 1.79-1 of this chapter (Income Tax Regulations)" and inserting in its place "the regulations under section 79".

[FR Doc. 79-15434 Filed 5-14-79; 4:05 p.m.]
BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 0

Redelegation of Authorization to Issue Subpoenas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final Order.

SUMMARY: The Administrator of the Drug Enforcement Administration is authorized under 28 CFR 0.104 to redelegate to any of his subordinates any of the powers and functions vested in him by Subpart R. One of those functions is the signing and issuance of subpoenas with respect to controlled substances under 21 U.S.C. 875 and 876. Currently, 28 CFR 0.104, Appendix to Subpart R, Section 7(a) authorizes Regional Directors and the Chief Inspector to sign and issue subpoenas under 21 U.S.C. 875 and 876. Section 7(b) authorizes special agents-in-charge to sign and issue subpoenas, with the concurrence of the responsible Regional Director, in regard to matters within their respective jurisdictions. On October 1, 1978, DEA reorganized its domestic structure and reduced the number of domestic regions from twelve to five.

Therefore, the Administrator must redelegate this function to Deputy Regional Directors, Special Agents-In-Charge, Inspectors-in-Charge, and Resident Agents-In-Charge, since experience has shown that because of their increased responsibilities and enlarged jurisdictions, Regional Directors are unable to timely process all requests for Administrative Subpoenas.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Robert T. Richardson, Deputy Chief Counsel, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, telephone (202) 633-1141.

Appendix to Subpart R [Amended]

Under the authority delegated to the Administrator of the Drug Enforcement Administration §§ 0.100 and 0.104 of Subpart R of Title 28, Code of Federal Regulations, the Appendix to Subpart R is hereby amended as follows:

1. Paragraph (a) in Section 7 shall read as follows:

Section 7. *Issuance of Subpoenas.* (a) The Chief Inspector, all Regional Directors, Deputy Regional Directors, Special Agents-In-Charge, Inspectors-in-Charge, and Resident Agents-In-Charge are authorized to issue subpoenas with respect to controlled substances under 21 U.S.C. 875 and 876 in regard to matters within their respective jurisdictions.

* * * * *

2. Paragraphs (b) and (c) of Section 7 are hereby deleted.

3. Paragraph (d) of Section 7 is hereby designated as "(b)".

Dated: May 9, 1979.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 79-15384 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 819

Environmental Services to Nonmilitary Agencies and Individuals

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising its rule on providing meteorological support to nonmilitary agencies. This revision explains Air Weather Service (AWS) basic policy for providing meteorological support and plans approval authority for providing meteorological support to nonmilitary agencies at a lower level.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT: Lt. Colonel Floyd D. Herndon, Jr., 697-4399.

The revised part will read as follows:

PART 819—PROVIDING ENVIRONMENTAL SERVICES TO NONMILITARY AGENCIES AND INDIVIDUALS

Sec.

Authority.—Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

Note.—This part is derived from Air Force Regulation AFR 105-9, November 17, 1978.

Note.—Part 806 of this chapter states the basic policies and instruction governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material references herein.

§ 819.1 Purpose.

This part defines the conditions under which the Air Force provides meteorological support to nonmilitary agencies and private individuals. It applies to Air Force activities that have an interest in providing Air Force meteorological support to civilians.

§ 819.2 Basic policy for providing meteorological support.

(a) The Department of Commerce, to the maximum extent practicable and permitted by law, will provide the basic meteorological services needed to meet the requirements of the general public.

(b) Air Weather Service (AWS) provides or arranges for staff and operational weather service for the Air Force under AFR 23-31, and for the Army under AFR 105-3/AR 115-10. designated unified or specified commands, and other agencies as directed by the Chief of Staff, United States Air Force.

(c) AWS also provides day-to-day weather support to:

(1) Civilian airlines using a facility where the AWS unit has been designated the International Civil Aviation Organization (ICAO) Meteorological Office.

(2) Civilian contractors who may request weather information in support of their work effort provided:

(i) They are located on a military facility; or

(ii) They are operating a government-owned facility where AWS has established support responsibility to the contractor host; and

(iii) The criteria in § 819.3 are met.

§ 819.3 AWS support to nonmilitary agencies.

(a) AWS may provide support to nonmilitary agencies or persons provided the following criteria are met:

(1) The national agency responsible for providing the support asks AWS to provide it.

(2) The support will not impair unit mission.

(3) The support will not require additional resources or the user agrees to reimburse the Air Force for the cost of the additional resources.

(4) The recipient is advised that the Air Force will not assume any legal, financial, or moral responsibility for the service provided.

(b) HQ USAF/RDP will provide an expression of Air Force research and development interest if AWS support is needed for a federal research and development project.

§ 819.4 Approval authority for support to nonmilitary agencies.

(a) Providing the criteria in § 819.3 are met, AWS units may approve a written request for nonrecurring support that involves the release of local weather information obtained by reproduction of extraction from local records or climatological documents. AWS units may also approve a written request for recurring support that involved the release of local weather information which can be obtained by reproduction of extraction from local records or climatological documents.

(b) Other requests not covered above should be referred to HQ USAF/XOOTF. Air Force elements should inform HQ USAF/XOOTF of any situation they believe would be in the Air Force interest to furnish meteorological services not otherwise authorized by this part. HQ USAF/XOOTF will evaluate each request to determine Air Force policy on providing the support and assign a prority if necessary.

Note.—Support may be furnished without regard to any of the limitations listed above in an emergency when the support is required to avert or lessen the loss of life, personal injury, or property damage.

§ 819.5 Reimbursement for meteorological support.

If appropriate, charges for support will be made according to DOD Manual 4000.19-M (available as shown in AFR 0-4, Department of Defense Joint Chiefs of Staff & Interservice Publications and AF Acquisition Documents).

§ 819.6 Exchange of meteorological data.

This part is not intended to affect or inhibit the normal exchange of meteorological data between the Air Force and other United States Federal or foreign national agencies.

[FR Doc. 79-15406 Filed 5-16-79; 8:45 am]
BILLING CODE 3910-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Child Support Enforcement

45 CFR Part 302

Child Support Enforcement Program; State Plan Requirements; Bonding of Employees and Handling of Cash Receipts

AGENCY: Office of Child Support Enforcement (OCSE), Department of Health, Education, and Welfare.

ACTION: Final Rule.

SUMMARY: These regulations add two new State plan requirements to the Child Support Enforcement Program. The first requires bonding of State or local employees who receive, handle or have access to cash. The second requires States to maintain methods of administration which prohibit the same person from being responsible for both the cash handling function and the accounting function in the Child Support Enforcement program. This is known as the separation of functions requirement. These regulations also provide that programs in sparsely populated areas do not have to meet the separation of functions requirement if HEW's Regional Child Support Enforcement Office waives the requirement.

EFFECTIVE DATE: July 16, 1979.

FOR FURTHER INFORMATION CONTACT: Steve Henigson, 301-443-5303.

SUPPLEMENTARY INFORMATION: *Statutory basis.* Section 502 of Pub. L. 95-30, enacted May 23, 1977, amends the Social Security Act to add a new State plan requirement (section 454(14)) which requires the Secretary to establish, and the States to comply with bonding requirements "for employees who receive, disburse, handle, or have access to, cash * * *."

Section 502 also adds a second new State plan requirement (section 454(15)) which requires the State to "maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts * * *."

Public participation. Interested persons were afforded an opportunity to participate in the development of the regulation by a Notice of Proposed Rulemaking published in the Federal Register on April 5, 1978 (43 FR 14323) and due consideration has been given to all comments received in response to the Notice.

We received 10 responses to the bonding portion of the Notice (45 CFR 302.19) from State welfare and child support agencies, and one each from a State Attorney General, a District Attorney, and the Office of Management and Budget. Three State child support enforcement agencies commented on the separation portion of the Notice. These comments and the Department's response to them are discussed below.

Minimum bond requirement. The Notice proposed that the required bond be not less than $10,000 or 15 percent of the maximum amount of money to which the employee has access on an annual basis, whichever is larger. A number of child support enforcement agencies expressed concern over the size of the bond, indicating that the minimum size requirement would impose a considerable expense upon States which have a centralized collection and accounting system.

One State welfare agency suggested that the minimum size of the bond be reduced to $2,000 and an exception be provided for sparsely populated areas. The Office of Management and Budget and a State welfare agency pointed out that a minimum bond need not be required since the State IV-D agency is liable in any case for loss of child support collections.

Because of these objections, in the final regulation the Department has deleted the minimum bond size requirement. The final regulation places full responsibility upon the State to establish a bonding program that will adequately protect the State IV-D program from loss. The Department believes that since the States would ultimately be liable for any loss it is in their interest to provide adequate bonding protection.

Self-bonding. While the proposed rule specifically provided for State self-bonding systems, no provision was made for a self-insured political subdivision to meet the bonding requirement. The final regulation would permit such an arrangement provided the locality's self-insurance program was acceptable to the State IV-D agency.

Requirements on courts and law enforcement officials. Several comments concerned the authority of the State IV-D agency to impose bonding requirements upon court and law enforcement officials operating under cooperative agreements. Similar questions were raised concerning the separation requirements. The Social Security Act makes both of these requirements State plan provisions. It may be necessary for the State to amend its cooperative agreements and purchase of service agreements in order to insure conformity with the new requirements.

Separation requirement. One State IV-D agency objected to the separation requirement which prohibits an individual from handling cash receipts and participating in the accounting function because in that State in many instances, the collection and disbursement of child support are performed by the same individual. We believe it was Congress' intent that, in a properly managed IV-D program, the same individual not perform the accounting and cash receipt functions. The exception for sparsely populated areas will preclude the hiring of additional staff in areas granted a waiver.

To insure that the legislative requirement will be fulfilled by all agencies participating in the IV-D program, the final regulation specifies that the separation requirement is applicable in situations where the collection and accounting functions are being performed under purchase of service or cooperative agreements.

In response to a suggestion from a State IV-D agency the final regulation specifies that methods of administration used to separate the cash handling and accounting function must follow generally recognized accounting standards. The Department believes this will help insure that child support collections cannot be misused.

45 CFR Part 302 is amended by adding new §§ 302.19 and 302.20 to read as follows:

§ 302.19 Bonding of employees.

The State plan shall provide that the following requirements and criteria to bond employees are in effect.

(a) *IV-D responsibility.*—The IV-D agency will insure that every person, who has access to or control over funds collected under the child support enforcement program, is covered by a bond against loss resulting form employee dishonesty.

(b) *Scope.*—The requirement in paragraph (a) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles or has access to child support collections, which includes:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Bond.*—The bond will be for an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty.

(d) *Self-bonding System.*—A State or political subdivision may comply with the requirement in paragraph (a) of this section:

(1) By means of a self-bonding system established under State law or,

(2) In the case of a political subdivision, by means of a self-bonding system approved by the State IV-D agency.

(e) *IV-D liability.*—The requirements of this section do not reduce or limit the ultimate liability of the IV-D agency for losses of child support collections from the State's IV-D program.

§ 302.20 Separation of cash handling and accounting functions.

The State plan shall provide that the following requirements and criteria to separate the cash handling and accounting functions are in effect.

(a) *IV-D responsibility.*—The IV-D agency will maintain methods of administration designed to assure that persons responsible for handling cash receipts of child support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of child support receipts. Such methods of administration shall follow generally recognized accounting standards.

(b) *Scope.*—The requirement in paragraph (a) of this section applies to persons who participate in the collection, accounting or operating functions which include:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Exception.*—The Regional Office may grant a waiver to sparsely populated geographical areas, where the requirements in paragraph (a) of this section would necessitate the hiring of unreasonable numbers of additional staff. The IV-D agency must document such administrative infeasibility and provide an alternative system of controls that reasonably insures that child support collections will not be misused.

(Sec 1102, 49 Stat. 647 (42 U.S.C. 1302).)
(Catalog of Federal Domestic Assistance Program No. 13679, Child Support Enforcement Program.)

Note.—The Office of Child Support Enforcement has determined that this document does not require preparation of a Regulatory Analysis as described by Executive Order 12044.

Dated: April 9, 1979.
Stanford G. Ross,
Director, Office of Child Support Enforcement.

Approved: May 10, 1979
Hale Champion,
Acting Secretary, Health, Education and Welfare.

[FR Doc. 79-15451 Filed 5-16-79; 8:45 am]
BILLING CODE 4110-07-M.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1379]

Minneapolis, Northfield and Southern Railway Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1379).

SUMMARY: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company's line at Lakeville, Minnesota is inoperable due to deteriorated track conditions. Shippers at Lakeville are being denied direct rail service because of this condition. The Minneapolis, Northfield and Southern Railway (MNS) has agreed to operate over the tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) at Lakeville in order to serve the shippers. Service Order No. 1379 authorizes the operation of the MNS over the tracks of the MILW at Lakeville, Minnesota.

DATES: Effective 11:59 p.m., May 11, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423 Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

Decided: May 9, 1979.

The line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) serving Lakeville, Minnesota, is inoperable because of track conditions over certain segments which are depriving shippers located adjacent to these tracks of essential railroad service. The Minneapolis, Northfield and Southern Railway (MNS) interchanges with the MILW at Lakeville and has consented to operate over a specific segment of MILW track, that is operable, at this location.

It is the opinion of the Commission that an emergency exists requiring operation of MNS trains over specific tracks of the MILW at Lakeville in the interest of the public; and that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1379 Service Order No. 1379.

(a) *Minneapolis, Northfield and Southern Railway authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railway Company.* Minneapolis, Northfield and Southern Railway (MNS) is authorized to operate over specific tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) at Lakeville, Minnesota, for the purpose of serving industries at this location.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) *Rates applicable.* Since this operation by the MNS over tracks of the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved by the MNS over the tracks of the MILW shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 11:59 p.m., May 11, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304–10305 and 11121–11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15433 Filed 5-16-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Opening of Prime Hook National Wildlife Refuge, Delaware to Sport Fishing

AGENCY: United States Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of Prime Hook National Wildlife Refuge, is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1, 1979 through December 31, 1979.

FOR FURTHER INFORMATION CONTACT: George F. O'Shea, Prime Hook National Wildlife Refuge, R.D. #1, Box 195, Milton, Delaware 19968 (302-684-8419).

SUPPLEMENTARY INFORMATION: The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established: and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Sport fishing shall be in accordance with all applicable State and Federal regulations subject to the following special conditions:

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

Public sport fishing and crabbing is permitted in areas designated by signs as open to fishing. These open areas are shown on maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

Sport fishing shall be in accordance with all State and Federal regulations covering fishing and crabbing, subject to the following special regulations:

1. Pond fishing in boats propelled manually or with electric motors is permitted on Fleetwood or Turkle Ponds. Those portions of these ponds having wood duck nesting boxes are closed to public entry from March 1, 1979 through June 30, 1979.
2. Boats may be launched from designated access points or public roads.
3. Bank fishing and crabbing is permitted only at designated access points and public road right-of-ways.

The provisions of this special regulation supplement the regulations which govern sport fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: May 9, 1979.

David B. Allen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-15308 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 44, No. 97
Thursday, May 17, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service[1]

[7 CFR Part 68]

Proposed Amendment to the U.S. Standards for Brown Rice for Processing and Milled Rice

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes that the term "paddy kernels" in the standards for Brown Rice for Processing and Milled Rice be redefined for purpose of clarity. The new definitions specify the amount of hull which must be adhering to rice kernels before they are considered paddy kernels.

DATES: Comments must be received by July 16, 1979. Proposed effective date is July 1, 1979.

ADDRESS: Comments may be sent in duplicate to James L. Driscoll, Director, Standardization Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0629-S, 1400 Independence Avenue, S.W., Washington, D.C. 20250. Comments will be made available for public inspection at the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: James L. Driscoll, Director, Standardization Division; Federal Grain Inspection Service; U.S. Department of Agriculture; Room 0629-S, 1400 Independence Avenue; S.W., Washington, D.C. 20250 (202) 447-9329.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946, as amended, provides for the issuance by the Secretary of Agriculture of standards with respect to quality, condition, quantity, grade, and packaging of agricultural commodities. It further provides for the voluntary inspection, upon request, by producers, merchandisers, and processors in the marketing of these commodities upon payment of a fee to cover the cost of service.

[1] Including matters within the responsibility of the Federal Grain Inspection Service.

Pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946, 60 Stat. 1087 and 1090 (7 U.S.C. 1622 and 1624), notice is hereby given according to the administrative procedures provisions of Section 553 of Title 5, United States Code, that the U.S. Department of Agriculture, after review and support by the Rice Miller's Association, a major representative of the rice industry, proposes amendments to the United States Standards for Brown Rice for Processing and the United States Standards for Milled Rice.

Change in the Definition of Paddy Kernels:

The present definitions for paddy kernels under the United States Standards for Brown Rice for Processing, and the United States Standards for Milled Rice do not clearly define the amount of hull adhering to a kernel of rice before it is considered a paddy kernel. The lack of clarity in the definition of paddy kernels in the standards for rice has caused problems in the uniform interpretation and application of the factor. This clarification is added to avoid confusion in the definition of paddy kernels, particularly in grading parboiled brown rice for processing and parboiled milled rice.

In the processing of parboiled rice, rough rice is steeped in water or steam heated. During parboiling the starchy endosperm of the rice kernel gelatinizes and the bran layers of the rice kernel are "cooked" into the gelatinized kernel. After this heat treatment, the rice is dried and the hull removed by shelling. Due to the nature of the parboiling process certain kernels may also have an area of the hull "cooked" into the kernel so that the hull is not easily removed through shelling.

The proposed definitions conform to interpretations of "paddy kernels" maintained by the Board of Appeals and Review and do not establish a new or revised substantive rule. The Board of Appeals and Review has applied a more specific interpretation of the definition as to the amount of hull remaining on a rice kernel before it is considered a paddy kernel. For milled rice this interpretation can be found in item 5.25 of the Rice Inspection Handbook, HB 918-11. The Department believes that these definitions are clearer and more descriptive, and should therefore be adopted for use in the official standards. These amendments are proposed in the interest of clarity and uniformity. It is proposed that § 68.252(j) of the United States Standards for Brown Rice for Processing and § 68.302(j) of the United States Standards for Milled Rice be amended to read as follows:

Subpart D—U.S. Standards for Brown Rice for Processing.[1]

Terms Defined

* * * * *

§ 68.252 Definition of other terms.

* * * * *

(j) *Paddy kernels.* Whole or broken kernels of rice having a portion of the hull remaining which is equal in area to one-half (½) or more of the whole or broken kernel shall be considered a paddy kernel.

* * * * *

Subpart E—U.S. Standards for Milled Rice.[1]

Terms Defined

* * * * *

§ 68.302 Definition of other terms.

* * * * *

(j) *Paddy kernels.* Whole or broken kernels of brown rice and whole or broken kernels of milled rice having a portion of the hull remaining which is equal in area to one-eighth (⅛) or more of the whole or broken kernel shall be considered a paddy kernel.

* * * * *

Done at Washington, D.C., on May 11, 1979.

David C. Mangum,
Acting Administrator.

[FR Doc. 79-15378 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-02-M

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

Agricultural Marketing Service [1]

[7 CFR Part 68]

Proposed Amendment to the U.S. Standards for Beans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The definition of "foreign material" in the U.S. Standards for Beans would be amended by deleting the words "cowpeas other than Blackeye types".

DATES: Comments must be received by July 16, 1979. Proposed effective date is August 1, 1979.

ADDRESS: Comments may be sent in duplicate to James L. Driscoll, Director, Standardization Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0629-S, 1400 Independence Avenue, S.W., Washington, D.C. 20250. Comments will be made available for public inspection at the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: James L. Driscoll, Director, Standardization Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0629-S, 1400 Independence Avenue, S.W., Washington, D.C. 20250, Telephone (202) 447-9329.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946, as amended, provides for the issuance by the Secretary of Agriculture of standards with respect to the quality, condition, quantity, grade, and packaging of agricultural commodities. It further provides for the voluntary inspection, upon request, by producers, merchandisers, processors, and consumers in the marketing of these commodities upon payment of a fee to cover the cost of service.

Pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946, 60 Stat. 1087 and 1090 (7 U.S.C. 1622 and 1624) notice is hereby given according to the administrative procedure provisions of Section 553 of Title 5, United States Code, that U.S. Department of Agriculture proposes an amendment to the United States Standards for Beans.

The Department, in response to concern raised by the dry bean industry and in the interest of uniformity among standards promulgated under the Act, proposes a change in the definition of foreign material in the U.S. Standards for Beans. Foreign material in grains and other commodities is defined as material other than the grains or commodity in which it is found. This includes earthy material, glass, metal, plant stalks, pods, cobs, weed seeds, and unlike grains or commodities. An exception to this definition of foreign material exists in the U.S. Standards for Beans. The definition of foreign material in beans in addition to the above, includes "cowpeas other than Blackeye types." These non-Blackeye cowpeas should not be singled out as being foreign material. These cowpeas are edible and fit the definition of Beans. For the sake of uniformity, this proposal deletes the words "cowpeas other than Blackeye types" from the definition of foreign material in the U.S. Standards for Beans. With this change, cowpeas which differ in color, size, or shape from the beans in which they are found would function as beans of a contrasting class. Cowpeas which are similar in color, size, and shape to the beans in which they are found would function under classes that blend. It is proposed that § 68.109 of the United States Standards for Beans be amended to read as follows:

Subpart B—U.S. Standards for Beans [2]

Terms Defined

§ 68.109 Foreign material.

Foreign material shall be stones, dirt, weed seeds, cereal grains, lentils, peas, and all matter other than beans.

* * * * *

Done at Washington, D.C., on May 11, 1979.

David C. Mangum,

Acting Administrator.

[FR Doc. 79-15407 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-02-M

[1] Including matters within the responsibility of the Federal Grain Inspection Service.

[2] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

[Docket No. AO-381]

[7 CFR Ch. IX]

Apples Grown in States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreements and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of apples grown in a production area comprised of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. It provides interested persons and opportunity to file written exceptions concerning the recommendations made therein.

The proposed order would establish a committee of growers and handlers for local administration. It would provide for establishment of maturity requirements for apples produced in the designated area based on committee recommendations. Also, it would authorize the committee to engage in production and marketing research, including promotional activities designed to promote distributon and consumption of apples. Consumers should benefit from an improved product and growers by an expanded market.

DATE: Written exceptions to this recommended decision may be filed by June 18, 1979.

ADDRESSES: Written exceptions should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued October 26, 1978, and published October 31, 1978 (43 FR 50691).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of apples grown in the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed marketing agreement and order were formulated on the record of a public hearing held at West Springfield, Massachusetts, December 4-5, 1978, and at Brentwoood (Epping), New Hampshire, December 7, 1978. Notice of the hearing was published in the October 31, 1978, issue of the Federal Register. The notice set forth a proposed order submitted by the New England Apple Marketing Order Study Committee on behalf of apple producers and handlers in the proposed production area.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to affected by the order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the order including;

(a) Definition of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, and duties of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments;

(d) The authority to establish production and marketing research, and market development projects;

(e) The method for regulating the handling of apples grown in the production area;

(f) The authority to exempt from regulation apples used for such special purpose, in such quantity, or in such type of shipment, as the committee, with the approval of the Secretary, may specify;

(g) The establishment of reporting and related recordkeeping requirements;

(h) The requirement of compliance with all provisions of the order and with the regulations issued pursuant thereto; and

(i) Additional terms and conditions as set forth in §§ .62 through .72 and published in the Federal Register (43 FR 50691) on October 31, 1978, which are common to marketing agreements and orders, and certain other terms and conditions as set forth in §§ .73 through .75, and also published in the said issue of the Federal Register, which are common to marketing agreements only.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Average annual production of apples grown in the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, hereinafter referred to as the "production area", during the 5-year period 1973–1977 was 321.7 million pounds. McIntosh is the predominant variety grown in the six New England States, constituting about two-thirds of the annual output in these States. On the average, the production area produces about 35 percent of the U.S. production of the McIntosh variety, and about 5 percent of U.S. production of all varieties. About 80 percent of the 1977 production of apples in the production area was disposed of through fresh sales. The remaining percentage was processed into products, except for a small quantity not utilized.

Apples grown in the various States within the production area may be shipped to markets within the State in which produced or shipped to markets in the other States within such area, or within other States. Apples produced in the area also are shipped to export markets. The apples are prepared for shipment in intrastate and interstate commerce in essentially the same manner. In addition, individual lots of apples, as they move to market, tend to be similar in that they are sold by type of pack and variety conforming with a specific grade, brand, count size or minimum diameter. Generally, no handler supplies any single segment of the market to the exclusion of every other handler. Therefore, all apples, grown in the production area in which are handled fresh fruit channels, exert an influence on all other handling of such apples in fresh form. Sellers of apples, as of other commodities, endeavor to transact their business so as to secure maximum returns for the apples they have for sale. The sellers of apples continually survey all accessible markets so as to take advantage of the best possible opportunity to market the fruit. Markets within the production area provide opportunities to dispose of apples the same as markets outside such area. The sale of a quantity of apples within such area exerts an influence on all other sales of apples. Buyers generally have access to market information, and knowledge of prices in one area is used when bargaining for apples in another area. Hence, it is concluded that any movement and sale of apples grown in the production area, whether to a market within the production area or outside thereof, affect prices for all apples grown in the production area. Therefore, it is found that all handling of apples grown in the production area, is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce; and, except as hereinafter otherwise provided, all handling of apples grown in the production area should be subject to the act and the order.

(2) In 1977 apples produced in the specified six State area totaled 343.6 million pounds compared to 312.5 million pounds in 1976. The annual average proportion of the crop shipped for fresh consumption during the period 1973–1977 was about 82 percent. As previously indicated, about two-thirds of the apple production within the production area is of the McIntosh variety. Other important varieties grown are Delicious, Cortland, and Golden Delicious. In 1977, these three varieties accounted for 23 percent of the production in such area. In addition, a number of new varieties have been planted. The record indicates that apples are grown on about 669 orchards in the production area. More than half of these orchards were in the size group ranging from 100 to 999 trees. Tree count data compiled in 1976 indicate that in 1975 there were 1,365,109 apple trees in the production area, about 30 percent more trees than in 1965. The number of McIntosh apple trees expanded sharply from 563,842 in 1965 to 791,219 in 1975. Based on increased tree plantings, it is anticipated that production will increase, particularly of the McIntosh variety. Moreover, slightly more than 40 percent of the 1975 tree count consisted of orchards planted to size controlling rootstock compared to about 14 percent in 1965. Trees on size controlling rootstock tend to produce earlier than trees on standard rootstock. Hence, there is a potential for a substantial increase in production in the near future.

Data showing apple unloads in selected market areas indicate mostly a steady level or decline in receipts of New England apples in 1977 compared to 1976. In 1977 the percentage of apples unloaded in Boston, Providence, and New York, which originated in the six New England States, was 44.0, 21.0 and 3.9 percent, respectively. In 1976 the percentage of such apples unloaded in these market areas was 47.3, 32.9 and 4.5 percent, respectively.

The 1977 season average price received by growers of apples grown in the production area sold for fresh consumption was 14.0 cents per pound, while the price for all methods of sale, including processing, was 12.6 cents per pound. Hence, it is apparent that fresh sales provide a greater return to growers. Prices for apples are usually relatively higher at the beginning of each marketing season. The record indicates that this tends to encourage handlers to ship apples in fresh fruit channels before the fruit reaches an acceptable level of maturity. It is particularly important in view of the prospective increase in production that the apples consumers receive are of desirable maturity. Immature apples are less palatable and generally do not receive consumer acceptance. Shipment of such apples tend to discourage consumption, depress the price for all apples, and contribute to disorderly marketing conditions for acceptable quality fruit. The establishment of regulations with respect to maturity, such as are contemplated under the order, would provide a method whereby orderly marketing could be promoted. This would tend to effectuate the declared policy of the act. The order also should provide for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of apples. These issues are discussed under material issues (5)(d) and (5)(e) of this decision.

(3) The term "apples" should be defined in the order to identify the commodity to be regulated thereunder. Such term, as used in the order, refers to all varieties of apples classified botanically as Malus sylvestris. The definition of apples should include varieties that may be developed and produced in the production area. Apples are readily distinguishable from other fruits, and the term has a specific meaning to all producers and handlers of the commodity in the production area.

A definition of the term "production area" should be incorporated in the order to designate the specific area in which the apples to be regulated are grown. Such term should be defined to mean the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. The apples produced within this area are similar in character and move freely within such area and to markets outside thereof and it would be impracticable to limit coverage to a lesser area. Moreover, while there are areas within this production area which are not planted to apples, many nonplanted areas are suitable for orchards and if such were excluded and later planted to apples, this production would be indistinguishable from the apples which are subject to the order. This would result in compliance problems and impede the effectiveness of the program. The boundaries of the area represented by State lines appropriately delineate the area and would make clear to growers and handlers the apples that are subject to the order. Hence, it is concluded that the production area, as hereinafter defined, is the smallest regional production area that is practicable consistently with carrying out the declared policy of the act.

(4) The term "handler" should be defined in the order to identify the persons who are subject to regulations under the order. Since it is the handling of apples that is regulated, the term "handler" should apply to all persons who place apples in the current of commerce by performing any of the activities within the scope of the term "handle", as hereinafter described. In other words, any person who is responsible for the sale, consignment, or transportation of apples, or who in any other way places apples in the current of commerce, should be a handler under the order and be required to carry out such activities in accordance with the order provisions.

The term "handle" should be defined to identify those activities that it is necessary to regulate in order to effectuate the declared policy of the act. Such activities include all phases of selling and transporting which place apples in the channel of commerce within the production area or from the production area to any point outside thereof. The performance of any one or more of these activities, such as selling, consigning, or transporting by any person, including a grower, either directly or through others, should constitute handling. In order to effectuate the declared policy of the act, each such person should be required, except as hereinafter indicated, to limit such handling of apples to fruit which conforms to the applicable requirements under the order.

Transportation by a common or contract carrier of apples owned by another person should not be considered as making such a carrier a "handler" as, in such instances, the carrier is performing a service for hire. Of course, if the carrier is the owner of the apples being transported, such carrier would be a handler the same as any other person who may primarily be engaged in another business—such as a producer or retailer—but at times is also a handler. Also, the order should permit exemption to facilitate the transportation of mature apples from the location where grown to a packinghouse or storage facility within the production area or to such other points as the committee, with the approval of the Secretary, may authorize for having such apples prepared for market or stored. However, such exemptions should not apply to the further handling of the apples so prepared or stored within the production area or other approved locations, and any person who subsequently sells, consigns, delivers, or transports such apples, or causes such apples to be sold, consigned, delivered, or transported within the production area or between the production area and any point outside thereof should be considered as the handler of such apples and subject to order requirements. The committee should recommend, and the Secretary approve, rules and regulations as it may deem necessary to assure that apples transported under these provisions comply with order provisions prior to entering channels of trade.

Apples are sometimes sold at the orchard where grown, at a roadside stand, or at a packinghouse to persons who transport the apples or cause the transportation thereof from such points to markets within and without the production area. The sale or delivery of apples and the subsequent movement to market are each handling transactions. Any person who engages in any such transaction, whether grower, packinghouse operator, or others, would therefore be a handler under the order by virtue of such transaction. Each such person handling apples should have the responsibility of assuring that the apples meet all applicable regulations in effect at the time of handling. It was advanced that selling apples as "pick-your-own" (where the seller invites the customer to the orchard to pick their own fruit) should be exempted from order provisions. However, as indicated, any activity involving selling, consigning, delivering, or transporting apples (except as specifically exempted) should constitute a handling function. "Pick-your-own" is simply a method of selling apples and there is no evidence to indicate that this type of sale should be exempted from the handling definition. One witness indicated that the order should provide that only apples shipped outside the production area should be subject to the order provisions. However, this is impractical since all handling of apples is in interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Therefore, it is concluded that, except as indicated herein and as specifically exempted by the act and order, all sales, consignment, or transportation of apples within the production area or between the production area and any point outside thereof should be subject to the order and any regulations issued pursuant thereto.

(5)(a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the order. These terms should be defined for the purpose of designating specifically their applicability and establishing appropriate limitations on their respective meaning whenever they are used.

The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for the Secretary to perform personally all functions and duties imposed by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act for the Secretary.

The definition of "act" provides the correct legal citation for the Agricultural Marketing Agreement Act of 1937, as amended, the statute pursuant to which the proposed regulatory program is to be operative, and avoids the need for referring to the citation each time it is used.

The definition of "person" should follow the definition of that term as set forth in the act, and will insure that it will have the same meaning as it has in the act.

The term "varieties" should be defined in the order, as hereinafter set forth, since it is proposed, for reasons hereinafter discussed, to provide authority for different regulations for different varieties of apples. Such regulations would recognize the different characteristics of the varieties. There are over 20 varieties of apples grown commercially in the production area. While only about 10 of such varieties are now produced in significant quantities, the others, plus additional varieties which are now being propagated, may become prominent in the future. Each of the varieties has characteristics which serve to distinguish it. From a market standpoint, however, they are competitive one with the other. It is necessary, therefore, that all varieties of apples, including those that may be developed in the future, be subject to regulations under the order.

The term "fiscal period" should be defined to set forth the period with respect to which financial records of the New England Apple Administrative Committee—the agency which will administer the program locally—are to be maintained. At the present time, it is desirable to establish a 12-month period ending the last day of June of each year as a fiscal period. Such a period would fix the end of one fiscal period and beginning of the next at a time of relative inactivity in the marketing of apples. Also, the beginning of the fiscal period would coincide with the beginning of the term of office of members and alternates, as hereinafter discussed, and this would allow sufficient time prior to the time shipments begin for the committee to organize and develop information necessary to its functioning during the ensuing year. Moreover, it would insure that a minimum of expenses would be incurred during a fiscal period prior to the time assessment income is available to defray such expenses. However, it may develop that for convenience of management or for other good and sufficient reasons not now apparent, that it would be desirable to establish a fiscal period other than one ending the last day of June. Hence, authority should be included in the order to provide for such establishment subject to approval of the Secretary pursuant to recommendation of the committee. Therefore, it is concluded that such term should be defined as hereinafter set forth to provide this flexibility.

A definition of "committee" should be incorporated in the order to identify the administrative agency established under the provisions of the program. Such committee is authorized by the act and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating its full name each time it is used.

The term "grower" should be synonymous with "producer" and should be defined to include any person who produces apples for market and who has a proprietary interest therein. A definition of the term grower is necessary for such determinations as eligibility to vote for, and to serve as, a member or alternate member of the New England Apple Administrative Committee and voting in referenda. The term "grower" should, therefore, be defined as hereinafter set forth.

"District" should be defined as set forth in the order to provide a basis for nomination and selection of committee members. The districts (i.e., the geographical divisions of the production area) as hereinafter set forth, represent an appropriate basis for providing a fair, adequate, and equitable representation on the committee.

The term "container" should be defined in the order to mean any bag, box, crate, basket, carton, package, bulk carton, or bin, or any other type of receptacle used in packaging or handling of apples. The definition of the term is needed to serve as a basis for differentiation among the various shipping receptacles, in which apples are sold or move to market.

A definition of "first sale unit" is needed to provide a convenient unit upon which to base assessments on handlers of apples. It would also provide a practical basis on which growers and handlers should file required reports on the volume of apples produced, utilized, and disposed of during specified periods. "First sale unit" should be defined to mean approximately 40 pounds of apples in any container or containers or in bulk. This unit of measurement is commonly used in the industry. (b) It is desirable to establish an agency to administer the order under and pursuant to the act, as an aid to the Secretary in carrying out the purpose of the order and the declared policy of the act. The term "New England Apple Administrative Committee" is a proper identification of the agency and reflects the character thereof. It should be composed of 15 members, of whom 10 should represent growers, four should represent handlers and one should represent the public. Alternate members should be provided to act in the place and stead of the members. Such a committee would be large enough to provide representation to all segments of the industry. At the same time, it is of such size that it can operate effectively and efficiently. The foregoing division of members between producers and handlers would provide suitable producer representation and handler experience and information. A majority of the committee should consist of producers because the program is designed to benefit producers. The provision for handler members tends to give balance to the committee by providing the handler experience and marketing information necessary to the development of economically sound regulation of apple shipments. The public member would be in a position to express the consumer's viewpoint in the contemplation of actions by the committee.

For grower representation on the committee, the production area should be divided into districts as specified in the order. District 1 should include the State of Maine, District 2 the State of

New Hampshire, District 3 the State of Vermont, District 4 the State of Massachusetts, and District 5 the States of Connecticut and Rhode Island. The ten grower members and alternate members of the committee should be allocated to these districts on the basis of two members and alternate members to each, with a provision that at least one grower member or alternate representing District 5 shall be from the State of Rhode Island. Each such member should be a producer in the district he or she represents. Such representation represents, to the extent practicable, the relationship of the volume of production in the five districts and provides that the interests of all areas will be represented. The ten grower members of the committee should be referred to as "grower members" of the committee.

The four handler members and their alternates should be selected from the production area at large, but no more than two handler members should be from any one district. This is appropriate since it would be most beneficial to the committee that the handler members have knowledge of marketing conditions throughout the production area. The four handler members of the committee should be referred to as "handler members" of the committee.

Each grower member of the committee, and alternate, should be a grower, or an officer or employee of a grower. There are growers in the production area which are companies, either incorporated or otherwise, and a company, as such, would be precluded from having representation on the committee unless officers and employees of growers were permitted to vote for and serve as grower members of the committee. A person who is a grower or an officer or employee of a grower should be acquainted with the problems of producing apples in the district where such person produces apples.

Each handler member of the committee and alternate should be a handler, or an officer or employee of a handler. There are handlers in the production area which are companies, either incorporated or otherwise, and a company, as such, would be precluded from having representation on the committee unless officers and employees of handlers were permitted to vote for and serve as handler members of the committee. Persons who are handlers or an officer or employee of a handler would be acquainted with the problems of handling apples grown in the production area and could contribute substantially in making decisions required under the order.

In addition to the 14 grower and handler members of the committee, there sould be an individual to serve as public member of the committee, and an individual who should serve as alternate. In recent years there have been manifested a greater interest in regulatory and other programs which are carried out under auspices of government. While committee meetings are open to the public, a public member on the committee could perform a valuable service to the committee and the general public by providing input into deliberations which reflect the views of consumers and the public generally whose principal interests lie outside the apple industry. Such member also would be valuable as an intermediary in explaining to consumers and others of similar orientation what the program is about and the rationale of actions taken. The nominee for the public member position should be a person who does not represent an agricultural interest and who is not financially interested in or associated with the production, processing, financing, or marketing of apples. The committee should specify in administrative rules issued, with approval of the Secretary, the additional qualifications which a person should possess to be eligible for the public member and alternate member positions. Nominations for public member and alternate member on the committee should be submitted to the Secretary by the committee consistent with a nomination procedure established by the committee and approved by the Secretary.

The term of office of committee members and alternates under the proposed program should be for three fiscal periods. However, the term of office for five of the initial grower members and two of the initial handler members and their alternates should end on the third succeeding June 30, and the term of office for five of the initial grower members and two of the initial handler members and their alternates should end on the second succeeding June 30. This procedure would set up a desirable rotation process which will assure continuity of operations by retaining experienced members who will be able to acquaint the new members of the committee with the program. It was advanced that it would be fair and reasonable to determine which of the initial members will serve two year terms of office and which will serve three year terms of office by lot, and it is concluded that such a procedure would be appropriate. A term of office starting July 1 will begin sufficiently in advance of the time when the volume of apples are harvested each season to allow adequate time for the committee to organize and start operating.

Provision should be made in the order for the Secretary to change the term of office pursuant to a recommendation from the committee. The order contains provisions for changing the fiscal year. If the fiscal year is changed, it would likely be desirable for the term of office of committee members to be changed to coincide with the new fiscal year. The term of office of the public member should be prescribed in an administrative rule recommended by the committee and approved by the Secretary.

Since it is possible that the new committee members may not be appointed immediately upon the expiration of the term of existing members, or that some may fail to qualify immediately, provision should be made for members to continue to serve until their successors are selected and have qualified. this is necessary to insure continuity of committee operations. Evidence presented at the hearing indicated that it would not be desirable for the same committee members to serve continuously. Acordingly, provision should be included in the order to preclude a member from serving on the committee for longer than two full consecutive terms. This provision should not apply to alternate members as alternate members actually serve on the committee only when the member is unable to serve. This provision should also not apply to all the initial members who are appointed and serve for less than a full three-year term of office.

As the committee will not be in a position to act until after the selection by the Secretary of its initial members, the order should provide that the names of nominees for the initial members and alternates may be submitted to the Secretary by individual growers and handlers, or that nominations for such positions may be made at meetings of growers and handlers. Such nominations should be made no later than the effective date of the order.

Nomination meetings for the purpose of designating nominees for successor members and alternates should, insofar as possible, be scheduled by the committee at such times and places as will result in maximum grower and handler participation. The committee should be authorized to adopt such procedural rules as may be deemed necessary to assure that such meetings will be conducted in an orderly and uniform manner.

Meetings for the purpose of designating nominess for successor members of the committee and their alternates should be held sufficiently in advance of the expiration of the term to allow selection of a successor prior to the start of the new term. Consequently, a meeting of growers in each district and a meeting of handlers should be held not later than May 15 in the year in which nominations are to be made to facilitate this. Handler members would be nominated from the entire production area at large. Thus, to insure equal opportunity for all handlers to participate, it would be appropriate to hold one meeting for the purpose of such nominations. Such meeting should be held at a location which should be equally accessible for all handlers.

The order should provide that only growers, including duly authorized officers or employees of growers, who are present at nomination meetings may participate in the nomination and selection of grower members and their alternates. To prevent a grower who produces apples in more than one district from having a bigger voice in nominations than a grower who produces apples in only one district, the order should provide that no grower be permitted to participate in the election of grower nominees in more than one district in any one fiscal year. However, each grower should be permitted one vote for each position to be filled in the district in which the grower produces apples. Additionally, a grower who produces in more than one district should be permitted to elect the district in which he will vote. The order also should provide that if a person is both a grower and handler of apples, such person may vote either as a grower or as a handler but not as both.

Only eligible handlers, including duly authorized employees or officers of such handlers, who are present at nomination meetings should be permitted to participate in the nomination and election of handler members and their alternates since the handlers should be the ones to indicate the persons they desire to represent them on the committee. Also, handlers should be allowed to cast only one vote for each nominee to be elected. The order should provide that in the nomination of persons to fill handler positions the vote of each handler to be weighted by the volume of apples handled during the preceding fiscal year. The requirement that handler votes be weighted by the volume of apples handled would tend to insure that the persons nominated for handler member and alterante member positions could contribute a broader range of experience relative to marketing problems that confront the industry.

In order that there will be an administrative committee in existence at all times to administer the order, and the Secretary not be limited as to nominees from which to select the committee membership, he should be authorized to select committee members and alternate members without regard to nomination if, for some reason, nominations are not submitted.

In conformance with the procedure prescribed in the order, or the selection of someone other than a nominee so submitted is deemed warranted by the Secretary. Such selection should, of course, be on the basis of the representation provided in the order so that the composition of the committee will at all times continue as prescribed in the order.

Each person selected by the Secretary as committee member or alternate should qualify by filing with the Secretary a written acceptance of a willingness and intention to serve in such capacity. This requirement is necessary so that the Secretary will know whether or not the position has been filled.

Provision should be set forth in the order for the filling of any vacancies on the committee, including selection by the Secretary without regard to nominations if such nominations are not made as prescribed, in order to provide for maintaining a full membership on the committee.

The order should provide that an alternate member shall be nominated and selected for each member of the committee in order to insure that each district will have grower representation and handler representation from the production area at large at meetings. Each alternate who is selected should have the same qualifications for membership as the member. In the event any member is absent, dies, resigns, is removed from office, or is disqualified, the alternate member should serve in such member's place so that the representation on the committee will remain unchanged. The alternate should serve until a successor to such member has been appointed and has qualified.

The committee should be given those specific powers which are set forth in Section 8c(7)(C) of the act. Such powers are necessary to enable an adminstrative agency of this character to function.

The committee's duties, as set forth in the order, are necessary for the discharge of its reponsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by the members of the committee will be confined to those which reasonably are necessary for the committee to carry out its responsibilities as prescribed in the program. It should be recognized that these specified duties are not necessarily all-inclusive, and that it may develop that there are other duties the committee may need to perform.

The provisions set forth in § .31(k) permit the committee to engage in research relating to packaging and maturity, grade and condition standards for apples. This provision is needed to permit the development and standardization of improved shipping containers and an appropriate maturity, grade, and condition standard which would tend to promote orderly marketing of apples. Section .31(l) would permit the committee to contract with qualified persons or agencies to conduct projects relative to production and marketing research and promotion, including paid advertising. The committee may be limited by the lack of facilities and trained technicians to perform such projects, and it should be authorized to contract for their conduct with any qualified agencies.

At least eight members of the committee, of which six must be grower members (or their alternates), should be present at any meeting of the committee in order for the committee to make decisions. Any committee action should require at least eight concurring votes. It is very desirable that a high percentage of the committee membership present agree to any action so as to obtain the necessary support of the industry. The provision that six grower members be present is desirable to assure grower participation in all meetings and actions of the committee.

The committee should be authorized to vote by telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast. In case of an assembled meeting, however, all votes should be cast in person.

It is appropriate that members of the committee, and alternates when acting as members, be reimbursed for out-of-pocket reasonable expenses incurred when performing committee business.

since it would be unfair to require them to bear personally such expenses incurred in the interest of all apple growers and handlers in the production area.

In order for grower or handler alternates adequately to serve effectively at any committee meeting in place of an absent member, it may be desirable that they should have attended previous meetings along with the member, so as to have a good understanding of background discussion leading up to an action that may be taken at the meeting. Likewise, an alternate may, in future years, be selected as a member on the committee; and to this extent, attendance at meetings by alternate members could be helpful. Although only committee members, and alternates acting as members, have authority to vote on actions taken by the committee, it is often desirable for the committee to obtain as wide a representation as practicable of producer and handler views and attitudes in considering a proposed regulation or other matter. Therefore, the order should provide that the committee, at its discretion, may request the attendance of alternate members at any or all meetings, notwithstanding the expected or actual presence of the respective member, when a situation appears to so warrant. The same reimbursement of expenses that are available to members should be made available to alternate members when they are requested and attend such meetings as alternates.

Provision should be made whereby the committee will prepare an annual report as soon as practical after the end of the fiscal year. Such report would provide committee members, the industry, and the Secretary with a record of the annual operations of the program and would provide a means for evaluation of the program and the need for any changes.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year for its maintenance and functioning and for such other purposes as the Secretary may, pursuant to the provisions of the marketing agreement and order, determine to be appropriate.

The funds to cover the expenses of the committee should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by any authority or agency established under an order, and requires that each marketing program of this nature contain provisions requiring handlers to pay their pro rata shares of expenses. The proposed New England Apple Administrative Committee would be the agency established to administer the order.

The committee should be required to prepare a budget at the beginning of each fiscal period showing estimates of the income and expenditures necessary for the administration of the order during such period. Each such budget should be submitted to the Secretary with an analysis of its components. Such budget and report should also recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. The committee, because of its knowledge of the prospective crop, will be in a good position to ascertain the necessary assessment rate and make recommendations in this regard.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, or other available information, so as to assure the imposition of such assesments as are consistent with the act. In order to assure the continuance of the committee, the payment of assessments should be required even if particular provisions of the marketing agreement and order are suspended or become inoperative.

The order should require each handler to pay to the committee, upon demand, his or her pro rata share of such expenses as the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each handler's share of such expenses should be equal to the ratio between the total quantity of apples handled by such handler as the first handler thereof during the applicable fiscal year and the total quantity of apples so handled by all handlers during the same fiscal year. In this way, payments by handlers of assessments would be proportionate to the respective quantities of apples handled by each handler and assessments would be levied on the same apples only once.

Should it develop that assessment income during a fiscal year would not provide sufficient income to meet expenses, the funds to cover such expenses should be obtained by means of increasing the rate of assessment subject to limitations hereafter described. Since the act requires that the administrative expenses shall be paid by handlers, this is the only source of income to meet such expenses. The increased assessment rate should be applied to all apples handled during the particular fiscal year so that the total payments by each handler during each fiscal year will be proportional to the total volume of apples handled during that period.

The marketing agreement and order should provide that the rate of assessment not exceed 5 cents per first sale unit (40 pounds) of apples. This was supported at the hearing on the basis that the inclusion of such restriction is necessary so handlers will know the maximum assessment which can be levied against them. Inclusion of such a restriction should allow an assessment to be levied sufficient to cover operational expenses anticipated at this time. However, a provision should be included to authorize the establishment of a rate of assessment higher than 5 cents per first sale unit if recommended by the committee and approved by growers in a referendum. Under this provision action may be taken by the committee and a referendum be conducted among apple growers to ascertain if growers favor such higher rate. The material furnished growers in the referendum should include the specific rate of assessment to be voted on and the details supporting the need for the increased rate. The referendum should be conducted by the committee. Authority to establish a rate of assessment higher than 5 cents per first sale unit should be contingent upon a finding that such maximum assessment rate is favored by at least two-thirds of the producers voting in the referendum or by two-thirds of the volume of production voted. Such percentage appears reasonable in that it is the same as that required for approval of the issuance of a marketing order. Any such maximum rate so established should be set forth in an administrative rule approved by the Secretary and remain in effect until changed in accordance with the foregoing procedure.

In order to provide funds for the administration of the program prior to the time assessment income becomes available during a fiscal year, the committee should be authorized to accept advance payments of assessments from handlers and also, when such action is deemed to be desirable, to borrow money for such purpose. The provisions for the acceptance by the administrative agency of advance assessment payments is included in other marketing agreements and orders and has been found to be a satisfactory and desirable method of providing funds to cover costs of operation early in a crop year prior to the time when assessment collections are being received in an appreciable amount. During years of normal growing conditions, revenue available to the committee from assessments within the year would provide the funds to repay any loans.

The order should provide authority for the committee to impose a late payment charge on any handler who fails to pay his assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee should be authorized to impose an additinal charge in the form of interest on such outstanding amount. Nonpayment of assessments can have an adverse effect on the operation of the committee and may require it to borrow money and pay interest to continue operation. Authority for the committee to levy a late payment charge and to add interest to the outstanding delinquent obligation should encourage handlers to pay assessment obligations promptly. By paying the obligation when due, handlers would not be subject to either the late payment charge or interest. It would not be desirable to specify the rate of interest in the order because interest rates change as the availability of money fluctuates. If the interest rate was specified in the order, it would be necessary to amend the order each time the interest rate should be changed. Amending the order involves a considerable amount of time and expense. Therefore, the order should permit the committee to establish the late payment charge, and fix the rate of interest, with the approval of the Secretary, so as to provide the flexibility needed to make such adjustments as are found to be necessary.

Should crop failure or partial crop loss reduce the crop so that assessment income falls below expenses, in the absence of a reserve it would be necessary for handlers in light of the reduced crop to cover the deficit. It could be burdensome on the industry to increase the assessment rate after some disaster had materially reduced the crop. A financial reserve available for any approved expenses could enable the committee to avoid such increases. It would be equitable for handlers to contribute to the establishment of an operating reserve during years of normal production rather than to be required to pay an excessively high rate of assessment during a year when the crop is materially reduced. The reserve fund should be built over a period of time, as funds in excess of expenses may be available. In order that reserve funds not be accumulated beyond a reasonable amount, however, it should be provided that such funds shall not exceed approximately one fiscal year's operational expenses. A reserve of that amount should be adequate to meet any foreseeable need. In view of the foregoing, it is concluded that authority should be provided, as hereinafter set forth to permit the establishment and use of a reserve fund in the manner heretofore described.

Handlers should be entitled to a proportionate refund of any excess assessments that remain at the end of a fiscal year, except as necessary to establish and maintain an operating reserve. However, any such refund should be reduced by any outstanding obligation due the committee from such handler.

Upon termination of the order, any funds, including any funds in the reserve, that are not used to defray the necessary expenses of liquidation should, to the extent practicable, be returned to the handlers from whom such funds were collected. However, should the order be terminated after many years of operation, the precise equities of handlers may be difficult to ascertain, and any requirement that there be a precise accounting of the remaining funds could involve such costs as to nearly equal funds to be distributed. Therefore, the order should permit the unexpended reserve funds to be disposed of in any manner that the Secretary may determine to be appropriate in such circumstances.

Funds received by the committee under the order should be used solely for the purposes of the order. The Secretary shuld be authorized to require the committee, at any time, to account for all receipts and disbursements. Such authority would aid in assuring careful administration of assessment funds. Also, whenever any person ceases to be a member or alternate of the committee, he or she should be required to account for all funds, property, and other committee assets for which he or she is responsible and to deliver such funds, property and other assets to the committee. Such person should also be required to execute such assignments and other instruments as may be appropriate to vest in the committee the right to all such funds and property and all claims vested in such person. This is a matter of good business practice.

(d) The order should provide, as hereinafter set forth, authority for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of apples. Record evidence shows there are specific areas where research on an industry basis is needed. For example, research is needed on the subject of apple maturity. Immature apples lack palatability, hence, it is clear that maturity is an important factor determining palatability of the fruit. Fruit specialists in State universities have conducted studies relating to apple maturity and have made their findings available to the public. However, varietal characteristics and localized conditions affect the progress of seasonal apple development, hence, it is contemplated that the committee may need to fund continuation of research and engage in additional research projects on maturity, in particular research to develop maturity indices that recognize differences peculiar to local situations. It was indicated that initially such research should focus on the primary varieties grown in the production area. Also, certain apple varieties, particularly the McIntosh variety, are susceptible to a condition generally referred to as the "soft McIntosh problem." This condition tends to render the fruit less marketable. It was indicated that research has been conducted in this area and some progress has been made on the factors which tend to mitigate the condition. However, further research is needed.

Presently, the industry has a problem of stimulating increased consumption of apples. The order could be used to test how consumers may be made more aware of apples, including new varieties. This may involve research at the institutional or retail store level utilizing informational and educational type literature describing the attributes of different varieties of apples, uses, and seasonal availability. It was also pointed out at the hearing that research is needed to improve the handling of apples. At present, apples, are handled in a variety of containers and packages. Research may lead to improved containers, or might indicate the desirability of standardization of containers.

These are but examples of the kinds of research that the committee may want to undertake. It is desirable in the interest of flexibility for the order to contain all the authority of the act for the committee to engage in research projects, relative to production and marketing which are designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of apples.

The order should include authority for the committee to engage in promotional activities, including paid advertising, as a means of strengthening the competitive position of apples in the marketplace. Growers have contributed funds on a voluntary basis to the New York and New England Apple Institute to promote apples. For various reasons, State enabling legislation or State marketing orders in the States included in the proposed production area have not materialized. The uncertainty of voluntary contributions makes it difficult to develop stable promotion budgets and hampers plans for long range market development. At the present time, a number of apple producing States outside of the proposed production area have State marketing orders or commissions which provide funds for apple market development. The record indicates that competition has intensified and competing apple producing regions have increased their advertising expenditures.

A viable promotion program under the order could provide a means whereby consumers could be made aware of the seasonal availability of apples, the different uses, and characteristics of different varieties of apples grown in the production area, particularly of the McIntosh variety. The use of paid advertising and other advertising techniques, as contemplated under the order, would provide the committee with a means for stimulating sales and enhancing returns to producers. Hence, the use of promotional techniques designed to increase consumer knowledge and awareness of apples and their uses should be authorized to achieve a more favorable balance between supply and demand. It is not possible at this time to anticipate all the promotional activities that may be required to meet the needs of the industry. Therefore, the authority for the committee to establish promotional and advertising projects should be broad and flexible, and available to the extent permitted under the act to facilitate development of programs suitable to the time and circumstances. A modification was advanced at the hearing which would provide for allocation of promotional effort to cold storage apples and controlled atmosphere (CA) storage apples based on the proportion of assessments of apples utilizing each type of storage. CA storage is described as a process of controlling the chemical content of the storage atmosphere as well as the temperature and humidity to prolong the life of apples. Apples referred to as "cold storage" apples are held in storages in which only the temperature and humidity are controlled. Generally, apples are removed from cold storage by January of the crop year and from CA storage several months later. Opposition to the proposed modification indicates that the objective is to promote sale and consumption of apples throughout the marketing season regardless of the type of storage employed. Under the program the committee should be charged with the responsibility for assessing the promotional needs and opportunities for marketing apples in particular situations. The record indicates that decisions on timing and allocation of advertising funds during the marketing season should be made by the committee in the light of existing circumstances at the time the decisions are made to permit optimum use of promotion funds. Therefore, it is concluded that it would not be in the interest of the industry to prescribe a specific allocation of promotion funds as proposed.

Prior to engaging in any research or development projects, the committee should, of course, submit to the Secretary for approval the plans for each project. When considering any research or development project, the committee should give consideration to all those factors set forth in the order. It is only good business to consider the cost, the objectives to be accomplished, the time required to complete the project and other factors in order to arrive at a sound decision as to whether the project is justified. Of course, the costs of any such projects should be included in the budget submitted for approval, and such costs should be defrayed by the use of assessment funds as authorized by the act. Promotion activity should be oriented toward creating a preference for apples produced in the production area. No advertising, promotion, or publicity programs should be conducted with reference to any particular private brand or trade name and promotion authorized under the order should not disparage the quality, value, sale or use of any other agricultural commodity.

One witness suggested the order include a provision which would provide for crediting the assessment obligation of each individual handler with all or a portion of his or her expenditures for advertising apples. Section 608c(6)(I) of the act provides that only orders applicable to almonds and Florida Indian River grapefruit may contain provision for crediting the pro rata expense assessment obligation of a handler with all or any portion of his direct expenditures for marketing promotion, including paid advertising. Hence, no such authority may be included in this proposed marketing order for apples.

In order to facilitate the operation of the program, the committee should each year, before recommending any rate of assessment or maturity regulation applicable to apples produced that year, prepare and adopt a marketing policy for the ensuing marketing season. A report on such policy should be submitted to the Secretary and made available to growers and handlers of apples. The marketing policy would provide information on the estimated volume of shipments of apples subject to assessments and outline the contemplated activities to be undertaken during the season. Such information and outline are necessary to enable the committee to arrive at a recommendation as to an appropriate rate of assessment to defray administrative and other expenses estimated for a fiscal period. The marketing policy also should be useful when specific regulatory action is being considered since it would provide basic necessary information. The marketing policy should be a plan for orderly marketing of the anticipated production. Among the factors the committee should review in developing the marketing policy are: an estimate of the total production of apples expected to be produced in the production area; the estimated utilization of the crop, including the percentages expected to be marketed in fresh outlets and in processing outlets; information on the quantity of apples in storage; available supply of competitive apples; supply of other competitive fruits; and maturity regulations expected to be recommended by the committee; research and market development projects expected to be recommended during the season; and any other known factors which may bear on the marketing of apples.

The committee should also be permitted to revise its marketing policy, if appropriate, so as to give appropriate recognition to the latest known market conditions when changes in such conditions are sufficient to warrant modification of such policy. Such action is necessary if the marketing policy is to be of maximum benefit to all persons concerned. A report of each revised marketing policy should be submitted to the Secretary and made available to growers and handlers, together with the data considered by the committee in making the revision.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for apples, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of apples, as authorized in the order, provides a means for carrying out such policy.

The committee should, as the local administrative agency under the order, be authorized to recommend maturity regulations and amendments thereto, authorized by the order, as will tend to effectuate the declared policy of the act. It is the key to successful operation of the order that the committee should have such responsibility. The Secretary should look to the committee, as the agency reflecting the thinking of the industry, for its views and recommendations for promoting more orderly marketing conditions and improving growers' returns for apples. The committee should, therefore, have authority to recommend such regulations and engage in such activities as are authorized by the order whenever such regulations or activities will, in the judgment of the committee, tend to promote more orderly marketing conditions and effectuate the declared policy of the act.

When conditions change so that the then current regulations do not appear to the committee to be carrying out the declared policy of the act, the committee should have the authority to recommend such amendment, modification, suspension, or termination of such regulations as the situation warrants.

The order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue maturity regulations which tend to improve growers' returns and to establish more orderly marketing conditions for apples. Too, providing more satisfactory apples would serve the consumer's interest. The Secretary should not be precluded from using such information as he may have, and which may or may not be available to the committee for consideration, in issuing such regulations, or amendments or modifications thereof, as may be necessary to effectuate the declared policy of the act. Also, when he determines that any regulation does not tend to effectuate such policy he should have authority to suspend or terminate the regulation, in accordance with the requirements of the act.

The order provides for regulation of the maturity of apples in fresh shipment. The maturity of apples whichare shipped in fresh market channels at any particular time have a direct effect on returns to growers. Immature apples fail to achieve consumer satisfaction and shipment of such fruit has a price depressing effect on other shipments of apples. Therefore, a requirement, under the order, that shipments of apples meet an acceptable level of maturity should improve producer returns by eliminating from fresh shipment apples which are not properly mature.

The objective under such order is to provide a supply of apples available for sale in fresh market channels of desirable maturity. Such limitations on shipments of apples grown in the production area should contribute to the establishment of more orderly marketing conditions for such fruit and tend to increase the demand therefore by providing the consumer a more palatable apple.

The record indicates that apple maturity often varies among different locations within the proposed production area. Also, different varieties of apples attain proper maturity at different times. Therefore, the order should authorize the Secretary, on the basis of a committee recommendation or other available information, to prescribe requirements applicable to maturity for different locations and for different varieties of apples.

There are several techniques to indicate maturity of apples. One such technique is to keep a record of the number of days that have elapsed from the date of full bloom. Another is to relate maturity to degree days—measuring heat units from time of blossom. Other criteria used to measure maturity include examination of the external and internal quality characteristics of the fruit such as firmness, soluble solids contents, and acidity. Studies are currently being conducted to correlate maturity to the carbon dioxide level or the ethylene level of apples. The evidence indicates that maturity of apples may be assured by specifying a date or dates prior to which apples of a given variety produced in a given location may not be shipped and/or specfying external and internal quality factors which the fruit must possess to be deemed mature. However, if research indicates other methods of assuring that apples are mature, the committee should not be precluded from using any appropriate method in regulating maturity under the order.

The record indicates that due to some unusual factor such as aberrant weather some apples may become mature prior to any date or dates fixed by regulation. Any date or dates established would represent the best judgement of the committee at the time such date was set. It is recognized that there may be apples which attain maturity earlier than anticipated by the committee. The proposed order should not prohibit the handling of properly matured apples. Therefore, the order should authorize a procedure to permit handling of such apple prior to any date established by regulation. Such procedure could require handlers to provide to the committee, on forms provided by the committee, and such assistance, including samples of fruit as will enable the committee to verify that such apples are mature. The committee should make such investigation as it deems appropriate in reaching a decision on the application. The record indicates that changes in maturity occur rapidly. Therefore, the committee should be required to take prompt action on each request and notify the applicant of its decision in a timely fashion. The procedure, including the manner of handling applications, and the information to be provided should be prescribed in an administrative rule recommended by the committee and approved by the Secretary.

It was contended at the hearing that maturity is difficult to define and any regulation of maturity of fresh shipment of apples could be arbitrary. It is recognized that further research on maturity is needed and should be instituted. Based on research conducted to date, it is believed that standards of maturity can be developed which would be in the interest of producers and consumers.

One witness suggested that the order should provide for minimum grade and size regulation of all shipments of apples and compulsory inspection and certification of such shipments. Other than this suggestion, there is no support in the record for this kind of regulatory approach, and nothing was presented showing how it would be practical under the conditions presently prevailing in the area.

It was suggested also that the order authorize limitations on the volume of apples marketed in fresh market channels. However, such testimony did not discuss a method by which handlers would receive a proportionate share of the amount to be marketed or how the provision could be implemented, hence, it is concluded that the record fails to jusitfy including any such provision. As herein before noted the preponderant testimony shows that at this time the program should be directed toward solving the major problem of assuring proper maturity of apples and expanding markets through research and promotional activities.

(f) The order should provide for the exemption from its provisions of such handling of apples which it is not necessary to regulate in order to effectuate the declared policy of the act. Insofar as practicable, such exempted handling should be stated explicitly in the order so that handlers will have knowledge of such handling as is not subject to the provisions of the program. However, it is recognized that it is not possible to foresee all possible needs for exemption; hence, provision should be made to authorize the committee, with the approval of the Secretary, to exempt some handling of apples from any or all order requirements such as specified small quantities, or types of shipments, including gift fruit shipments, shipments made for specified purpose which are not necessary to regulate in order to effectuate the declared policy of the act. Authorization is also necessary to enable the exemption of handling as may be determined necessary to facilitate the conduct of research; and handling which is found not administratively feasible to regulate because of the small volume and the cost involved and which would not materially affect marketing conditions in commercial channels.

Initially, provision should be made to exempt from assessment provisions of the order the handling of apples in quantities not exceeding 250 first sale units in any fiscal period provided that the handling is performed by the producer of the apples. This provision is desirable because there are many persons who produce and sell small volumes of apples for local consumption. It is likely that costs incurred by the committee in billing and collection of assessments from persons handling such volume of apples would exceed the amount of assessment levied. Therefore, it would be impracticable to assess apples handled in this manner. This exemption should apply to the first 250 first sale units by the producer. Any apples handled by such producer in excess of this quantity should be subject to assessment. It was advanced at the hearing that while such exemption initially should be limited to 250 first sale units the order should contain a provision; under which the committee could recommend, and the Secretary approve, an increase in such quantity. Consequently, if it develops that a higher exemption would be practical consistent with the objectives of the program it is concluded that the order should so provide. Provision should also be made to exclude from the assessment provisions of the order apples handled for processing and juice, in gift packages, and for distribution by relief agencies as such apples do not interfere with commercial fresh market shipments.

The committee should retain flexibility to prescribe exemption provisions so as to be responsive to conditions affecting the handling of apples in the production area. Therefore, it should be discretionary with the committee, subject to the approval of the Secretary, whether apples handled in small quantities, types of shipments, or shipments made for special purposes, should be exempted from regulation, assessments and reporting requirements.

If it is found that such exemptions are subject to abuse or weaken the effectiveness of the program, the committee should be authorized to prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as are necessary to prevent apples handled for any of the exempted purposes from disrupting the marketing of apples in regulated channels of trade. For example, should it be found that a portion of the apples moving to commercial processors is being diverted to fresh fruit markets; it may be necessary for the committee to establish procedures to govern the movement of fruit for processing even though such apples do not have to comply with maturity or other requirements. These procedures might include such requirements as filing application for authorization to move apples in exempted channels and certification by the receiver that such apples would be used only for the purpose indicated, if it is found that such requirements are necessary to achieve effective program operations.

(g) The committee should have authority, with the approval of the Secretary, to require that growers and handlers submit to the committee such reports and information as may be needed for the performance of its functions under the order. Growers and handlers have such necessary information in their possession, and the requirements that they furnish such information to the committee in the form of reports would not constitute an undue burden. It is anticipated that the information needed by the committee will include production, utilization, receipt and disposition of the crop. However, it is difficult to anticipate every type of report or kind of information which the committee may find necessary in the conduct of its operations under the order. Therefore, the order should require growers and handlers to furnish upon request of the committee, such reports and information, as are found necessary to enable the committee and the Secretary to carry out order responsibilities.

Any reports and records submitted for committee use by growers and handlers should remain confidential and be disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the release of information compiled from reports may be helpful to the committee and the industry generally in planning for operations under the order during the marketing season. However, such reported information should not be released other than on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor their individual operations. This is necessary to prevent the disclosure of information that may affect the trade or financial position or the business operations of individual growers and handlers.

Since it is possible that a question could arise with respect to compliance, each grower and handler should be required to maintain for each fiscal period complete records, as applicable, on their production, utilization, and disposition of apples. Such records should be retained for not less than 2 years after the end of the fiscal year in which the transaction occurred, so that, if needed in connection with enforcement, the requisite records will be available for that purpose.

(h) Except as provided in the order, no handler should be permitted to handle apples, the handling of which is prohibited pursuant to the order; and no handler should be permitted to handle apples except in conformity with the order. If the program is to operate effectively, compliance therewith is essential; and, hence, no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to the handlers who are in compliance and would tend, thereby, to impair the effective operation of the program.

(i) The provisions of §§ .62 through .72, as hereinafter set forth, are similar to those which are included in other marketing agreements and orders not operating. The provisions of §§ .73 through .75, as hereinafter set forth, also are included in other marketing agreements now operating. All such provisions are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the act. Testimony at the hearing supports the inclusion of each such provision. Those provisions which are applicable to both the proposed marketing agreement and marketing order, identified by section number and heading, are as follows: § .62 *Right of the Secretary;* § .63 *Effective time;* § .64 *Termination;* § .65 *Proceedings after termination;* § .66 *Effect of termination or amendment* § .67 *Duration of immunities;* § .68 *Agents;* § .69 *Derogation;* § .70 *Personal liability;* § .71 *Separability;* and § .72 *Amendments.*

With respect to § .64 *Termination,* record evidence shows that it is the wish of the industry, and the order so provides, that after the close of the fifth fiscal year following the effective date of the order the Secretary conduct a referendum among growers to ascertain if continuance of the order is desired by growers. This would provide a sufficient time to permit growers to appraise the operation of the program and determine whether the program should be continued. In addition, the order should contain a provision requiring the Secretary, upon petition and recommendation of 25 percent of the growers of record, to conduct a referendum to determine whether termination of the order is favored by growers. Any petition and recommendation by growers should be received by the committee no later than December 15 of the then current fiscal year. In any event the Secretary may conduct a referendum at such other times as he may determine to be appropriate. Such authority is contained in § .64(c) of the order.

Provisions which are applicable to the proposed marketing agreement only, identified by section number and heading, are as follows: § .73 *Counterparts;* § .74 *Additional parties;* § .75 *Order with marketing agreement.*

Copies of letters from Mr. Rufus Prince, Prince Farm, Inc., Turner, Maine, Mr. Don Ricker, Ricker Hill Orchards, Turner, Maine, and Mr. Benjamin W. Drew, Vershire, Vermont, were offered in evidence at the hearing. Each supported the proposed marketing agreement and order program generally on the basis that the current voluntary program among apple growers in the New England area has not proved satisfactory.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed January 18, 1979, as the final date for interested parties to file proposed findings and conclusions and written arguments or briefs based upon the evidence received at the hearing. One letter was received from Mr. Harold M. Kelly, Essex County Fruit Growers Association, Hathorne, Massachusetts. Mr. Kelly indicated that the association believes the present method of promoting apples in the area is satisfactory and a marketing order program should not be instituted. This suggested finding is denied on the basis that the record does not support it. Also, the Department received a request filed on behalf of Shoreham Cooperative Apple Producers Association, Shoreham, Vermont, to reopen the hearing to permit the introduction of further evidence and argument. The request was denied as ample notice and opportunity was provided at two accessible locations as set forth in a letter dated January 29, 1979, signed by the Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service. Copies of the correspondence in this matter were made a part of the record evidence in this proceeding.

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of apples grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The marketing agreement and order prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of apples grown in the production area; and

(5) All handling of apples grown in the production area, as defined in said marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended Marketing Agreement and Order

The following marketing agreement and order [1] are recommended as the detailed means by which the foregoing conclusions may be carried out.

Definitions

§ .1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ .2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ .3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ .4 Production area.

"Production area" means the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

§ .5 Apples.

"Apples" means all of the varieties grown in the production area classified botanically as Malus sylvestris.

§ .6 Varieties.

"Varieties" means and includes all classifications or subdivisions of apples.

§ .7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on July 1 of one year and ending on the last day of June of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ .8 Committee.

"Committee" means the New England Apple Administrative Committee established pursuant to § .20.

§ .9 Grower.

"Grower" is synonymous with "producer" and means any person who produces apples for market, and who has a proprietary interest therein.

§ .10 Handler.

"Handler" is synonymous with "shipper" and means any person who

[1] The provisions identified with asterisks (***) apply only to the proposed marketing agreement and not to the proposed marketing order.

sells or handles or causes apples to be handled, or sold.

§ .11 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport apples, or cause apples to be sold, consigned, delivered, or transported within the production area or between the production area and any point outside thereof: *Provided*, That such terms shall not include: (a) a contract or common carrier transporting apples owned by another person, or (b), the transportation of apples from the location where grown, to a packinghouse, or storage facility within the production area or to such other points as the committee may prescribe with approval of the Secretary for the purpose of storing, or having the apples prepared for market subject to such rules and regulations as the committee may prescribe with the approval of the Secretary.

§ .12 District.

"District" means the applicable one of the following described subdivisions of the production area:

(a) "District 1" shall include the State of Maine;

(b) "District 2" shall include the State of New Hamshire;

(c) "District 3" shall include the State of Vermont;

(d) "District 4" shall include the State of Massachusetts;

(e) "District 5" shall include the States of Connecticut and Rhode Island.

§ .13 Container.

"Container" means any box, bag, crate, basket, carton, package, bulk carton, or bin; or any other type of receptacle used in packaging or handling of apples.

§ .14 First sale unit.

"First sale unit" means approximately 40 pounds of apples in any container or containers or in bulk.

Administrative Body.

§ .20 Establishment and membership.

There is hereby established a New England Apple Administrative Committee consisting of fifteen (15) members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. Ten (10) of the members and their respective alternates shall be growers or officers or employees of growers; henceforth referred to as "grower members" of the committee. Each of the five (5) districts shall each be represented by two (2) grower members and their respective alternates: *Provided*, That each shall be a producer of apples in his or her respective district, and *Provided further*, That at least one grower member or alternate representing "District 5" shall be from the State of Rhode Island. Four (4) members and their respective alternates shall be handlers or officers or employees of handlers, henceforth referred to as "handler members" of the committee. Handler members and alternates shall be selected from the production area at large: *Provided*, That not more than two members may be from one district. The committee shall be increased by one public member and respective alternate nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the public member and alternate.

§ .21 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for three fiscal periods beginning July 1 and ending the third succeeding June 30: *Provided*, That the initial term of office of one grower member and alternate member of the committee from each district shall be for three years beginning on or about July 1 and ending on the third succeeding June 30. The initial term of office of one grower member and alternate member from each district shall be for two years beginning on or about July 1 and ending on the second succeeding June 30. The initial term of office of two handler members and alternate members shall be for three years beginning on or about July 1 and ending on the third succeeding June 30. The initial term of office of the other two handler members and alternate members shall be for two years beginning on or about July 1 and ending on the second succeeding June 30. (Determination of length of term of initial members shall be by lot.) No member may serve more than two successive terms. The committee, with the approval of the Secretary, may change the term of office of members and alternate members.

(b) Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ .22 Nomination.

(a) *Initial members*: Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of a meeting of all handlers, and a meeting of growers in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for the initial members are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selection shall be on the basis of the representation provided for in § .20.

(b) *Successor members*. (1) The committee shall hold or cause to be held, not later than May 15, in the year in which nominations are to be made, a meeting of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. At each meeting, a chairman and a secretary shall be selected by persons eligible to participate therein. The chairman shall announce at the meeting the number of votes cast or each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary. (2) Only growers, including duly authorized officers or employees of growers, who are present at such nomination meetings may participate in the nominations for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which the grower produces apples. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of apples, such person may vote either as a grower or as a handler, but not as both. (3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote; which vote shall be weighted by the volume of apples handled by such handler during the preceding fiscal year. If a person is both a grower and a handler of apples, such person may vote either as a grower or as a handler but not as both.

§ .23 Selection.

From the nominations made pursuant to § .22, or from other qualified persons, the Secretary shall select the 10 grower members of the committee, the four handler members of the committee, and an alternate for each such member.

§ .24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § .22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § .20.

§ .25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ .26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in § .22 and § .23. If the names of nominees to fill any such vacany are not made available to the Secretary within a reasonable time after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § .20.

§ .27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act unitl a successor for such member is selected and has qualified.

§ .30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ .31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers; and to select subcommittees, and define the duties of each;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties and procedures of each;

(c) To submit to the Secretary at the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare a statement of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To require adequate fidelity bonds for all persons handling funds;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(h) To act as intermediary between the Secretary and any grower or handler;

(i) To provide an adequate system for estimating the total season crop of apples and to make such determinations, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(j) To investigate the growing, handling, and marketing conditions with respect to apples, and to assemble data in connection therewith;

(k) To engage in such research relating to improved packaging and/or to the determination of maturity, grade and condition standards for apples as may be approved by the Secretary;

(l) To contract with appropriate parties for the purpose of conducting production and marketing research programs, including paid advertising, promotion, and publicity for apples;

(m) To submit such available information, including verified reports, as the Secretary may request;

(n) To notify producers and handlers of meetings of the committee; and

(o) To give the Secretary the same notice of meetings of the committee as is given to its members.

§ .32 Procedure.

(a) Eight members of the commitetee, six of whom shall be grower members including alternates acting for members, shall constitute a quorum; and any action of the committee shall require at least eight concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication, and any vote so cast shall be confirmed promptly in writing: *Provided*, That, if an assembled meeting is held, all votes shall be cast in person.

§ .33 Expenses and compensation.

The members of the committee and alternates when acting as members, or when requested by the committee to attend a committee meeting or to perform another committee function shall serve without compensation; but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

§ .34 Annual report.

The committee shall, as soon as practicable after the end of the fiscal year, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) a review of the operations during the fiscal year; (b) a summary of marketing research and development, promotion and advertising activities, if any; and (c) any recommendations for changes in the program.

Expenses and Assessments

§ .40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year.

§ .41 Assessments.

(a) Each person who first handles apples shall, with respect to the apples so handled by such person, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of apples handled by such handler as the first handler thereof during the applicable fiscal year and the total quantity of apples so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary, shall fix the rate of assessment not to exceed 5 cents per first sale unit or equivalent in containers or in bulk to be paid by each such person. At any time during or after the fiscal year, the Secretary may, subject to the limitations of this paragraph, increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. A rate of assessment higher than 5 cents per first sale unit may be established but first must be approved by at least two-thirds of the growers voting or two-thirds of the volume of apples voted in a referendum. Such assessment shall be applied to all apples handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part during the fiscal year before sufficient operating income is available from assessment, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(c) The committee shall impose a late payment charge on any handler who fails to pay his assessment within the time prescribed by the committee. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the committee shall impose an additional charge in the form of interest on such outstanding amount. The rate of such charges shall be prescribed by the committee, with the approval of the Secretary.

§ .42 Accounting.

(a) If, at the end of a fiscal year the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraphs (a) (2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal year unless such person demands payment thereof, in which event it shall be paid to such person: *Provided*, That any sum paid by a person in excess of such person's pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations of such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years, an operating monetary reserve in an amount, not to exceed approximately 1 fiscal year's operational expenses. Upon approval by the Secretary, funds in such reserve shall be available for use by the committee for all expenses pursuant to § .40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to such member's successor in office and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Market Development

§ .45 Production research, marketing research, and market development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of apples. Such projects may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid by funds collected pursuant to § .41

(b) The committee, with the approval of the Secretary, may contract with any person or persons to carry out advertising, promotion, and publicity programs. No advertising, promotion or publicity programs shall be conducted with reference to any particular private brand or trade name and no such program shall disparage the quality, value, sale or use of any other agricultural commodity. The expenses of such programs shall be paid by funds collected pursuant to § .41.

§ .50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to §§ .41 and .51, the committee shall submit to the Secretary a report setting forth its marketing policy for the season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of apples within the production area;

(2) The estimated utilization of the crop, showing the quantity and percentages of the crop expected to be marketed through fresh fruit channels; the quantity and percent of the crop expected to be utilized in processed products; and storage information;

(3) Available supplies of competitive apples from outside the production area, and other competitive fruit;

(4) Other factors having a bearing on the marketing of apples;

(5) The type of maturity regulations expected to be recommended during the season; and

(6) The type of research and market development projects expected to be recommended during the season and the effect on utilization.

(b) In the event that it becomes advisable to substantially modify such marketing policy the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this section. The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers. The committee shall announce the contents of each marketing policy report, including each revised marketing policy report.

Maturity Regulations

§ .51 Recommendations for regulations.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of apples in the manner provided in § .52, it shall so recommend to the Secretary.

(b) All meetings of the committee held for the purpose of formulating recommendations for regulations shall be open to growers and handlers. The committee shall give notice of each such meeting to growers and handlers by mailing a notice to each grower and handler who has filed a mailing address with the committee and requested such notice.

§ .52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of apples whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may (1) specify a date or dates prior to which apples of any variety or varieties produced in any district or specified portion thereof may not be handled, or (2) specify external or internal maturity characteristics which the variety or varieties so produced must possess prior to being handled, or (3) specify such other requirements applicable so such variety or varieties as have been found to constitute a reliable maturity index. The committee may establish, with the approval of the Secretary, a procedure to permit handling of properly matured apples prior to any date established by regulation.

(b) The committee shall be informed immediately of any regulation issued by the Secretary and the committee shall promptly give notice thereof to growers and handlers.

§ .53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § .52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information that a regulation should be modified, suspended, or terminated with respect to any or all shipments of apples in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ .54 Exemptions.

(a) The committee may, with the approval of the Secretary, relieve from any or all requirements established under this part, the handling of apples for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § .45), or in such minimum quantities, types of shipments, methods of handling, as may be prescribed.

(b) Except as otherwise provided the provisions of § .41 shall not apply to the first 250 first sale units of apples handled in any fiscal period by the person who produced them or such other higher quantity recommended by the committee and approved by the Secretary or to the handling of apples by any person: (1) for processing and juice: (2) in gift packages; (3) for distribution by relief agencies.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent apples handled under provisions of this section from entering into channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include requirements that handlers shall file applications and receive approval from the committee for authorization to handle apples pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the apples will not be used for any purpose not authorized by this section.

Reports

§ .60 Reports.

(a) Each grower shall furnish to the committee, at such times and for such periods as the committee may designate, reports covering the production, utilization, and disposition of his or her crop, to the extent necessary for the committee to perform its functions.

(b) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, all shipments of apples.

(c) Each grower and handler shall maintain for at least two succeeding fiscal years, such records of the production, utilization and disposition of apples or of apples received and disposed of by such grower and handler, as applicable, as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by growers and handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular grower or handler from whom received: *Provided*, That such data and information may be combined, and made available to any person in the form of general reports in which the identities of the individual furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ .61 Compliance.

Except as provided in this part, no person shall handle apples except in conformity with the provisions of this part and the regulations issued thereunder.

§ .62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ .63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § .64.

§ .64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least 1 day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the

Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers voting in such referendum: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of apples which were produced within the production area for fresh market. Such termination shall become effective on the first day of July subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall, as soon as practicable after the close of the fifth fiscal year following the effective date of this part, conduct a referendum, to ascertain whether continuance of this part is favored by the growers. The Secretary shall terminate the provisions of this part if the Secretary finds by such referendum, as provided in paragraph (c) of the section, that termination is favored by growers.

(e) Upon petition and recommnedation of 25 percent of the growers of record, the Secretary shall be referendum determine whether termination of this part is favored by growers, but such action shall be effected only if the petition is submitted for validation by the commitee on or before December 15 of the current fiscal year. To determine by such referendum whether termination is favored by producers, the required percentages set forth in the act with respect to producer approval of the issuance of a marketing order shall be used.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ .65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property them in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ .66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ .67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virute of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ .68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ .69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ .70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ .71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ .72 Amendments.

Amendments to this part may be proposed from time to time, by the committee or by the Secretary.

§ .73 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original. * * *

§ .74 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by the handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party. * * *

§ .75 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of apples in the same manner as is provided for in this agreement. * * *

A Draft Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447-5975.

Copies of this Recommended Decision are being mailed to known interested persons. Others may obtain copies from Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250.

Signed at Washington, D.C., on May 11, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-15447 Filed 5-16-79; 8:45 am]
BILLING CODE 3410-02-M

EXPORT-IMPORT BANK OF THE UNITED STATES

[12 CFR Part 408]

National Environmental Policy Act Procedures

ACTION: Proposed NEPA procedures.

SUMMARY: These procedures have been prepared pursuant to the National Environmental Policy Act of 1969 and regulations issued by the Council on Environmental Quality.

DATE: Comments must be received on or before June 15, 1979.

ADDRESS: Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, D.C. 20571.

FOR FURTHER INFORMATION, CONTACT: Warren W. Glick, General Counsel (202-566-8834), Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, D.C. 20571.

SUPPLEMENTARY INFORMATION: It is proposed to amend Chapter IV of Title 12 by adding the following Part 408:

PART 408—PROCEDURES FOR COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Authority: 42 U.S.C. 4321, et seq.

§ 408.1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decision-making and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA (NEPA Regulations). Accordingly, CEQ issued final NEPA Regulations which are binding on all Federal agencies as of July 30, 1979 (40 CFR Parts 1500–1508) on November 29, 1979. These Regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the NEPA Regulations. Section 1507.3(b) of the NEPA Regulations identifies those sections of the NEPA Regulations which must be addressed in agency procedures.

§ 408.2 Purpose.

The purpose of this Part is to establish procedures which supplement the NEPA Regulations and provide for the implementation of those provisions identified in § 1507.3(b) of the NEPA Regulations.

§ 408.3 Applicability.

Historically, virtually all financial assistance provided by Eximbank has been in aid of U.S. exports which involve no effects on the quality of the environment within the United States, its territories or possessions. Eximbank has separate procedures for conducting environmental reviews where such reviews are required by E.O. 12114 (January 4, 1979) because of potential effects on the environment of global commons areas or on the environment of foreign nations. The procedures set forth in this Part apply to the relatively rare cases where Eximbank financial assistance for U.S. exports may affect environmental quality in the United States, its territories or possessions.

Subpart B—Eximbank Implementing Procedures

§ 408.4 Early involvement in foreign activities for which Eximbank assistance may be required.

(a) Section 1501.2(d) of the NEPA Regulations requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. Pursuant to the Export-Import Bank Act of 1945, as amended, Eximbank is asked to provide financial assistance for transactions (Transactions) involving exports of U.S. goods and services for projects in foreign countries which are planned by non-U.S. entities.

(b) To implement the requirements of § 1501.2(d) with respect to these Transactions, Eximbank—

(1) Will provide on a project-by-project basis to applicants seeking assistance from Eximbank guidance as to the scope and level of environmental information to be used in evaluating a proposed transaction where (i) a Transaction may significantly affect the quality of the human environment in the United States, its territories or possessions and (ii) the proposed Eximbank financial assistance would be a major action.

(2) Upon receipt of an application for Eximbank financial assistance or notification that an application will be filed, will consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

These responsibilities will be performed by the Office of the General Counsel and Engineering Division of Eximbank.

(c) To facilitate Eximbank review of Transactions for which positive determinations have been made under § 408.4(b)(1) (i) and (ii), applicants should—

(1) Consult with the Engineering Division as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(2) Conduct any studies which are deemed necessary and appropriate by Eximbank to determine the impact of the proposed action on the quality of the human environment;

(3) Consult with appropriate U.S. (Federal, regional, State and local) agencies and other potentially interested parties during preliminary planning states to ensure that all environmental factors are identified;

(4) Submit applications for all U.S. (Federal, regional, State and local) approvals as early as possible in the planning process;

(5) Notify Eximbank as early as possible of all other applicable legal requirements for project completion so that all applicable Federal environmental reviews may be coordinated; and

(6) Notify Eximbank of all known parties potentially affected by or interested in the proposed action.

§ 408.5 Ensuring environmental documents are actually considered in agency decisionmaking.

Section 1505.1 of the NEPA Regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Eximbank officials will—

(a) Consider all relevant environmental documents in evaluating requests for Eximbank assistance;

(b) Ensure that all relevant environmental documents, comments and response accompany the request through Eximbank's review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating a request which is the subject of an EIS.

Eximbank actions	Start of NEPA process	Completion of NEPA process	Key officials or offices required to consider environmental documents
Issuance of Preliminary Commitment (P.C.).	When request is received	When staff memorandum regarding proposed transaction for which P.C. is requested is sent to the Board. Following positive determination under § 408.4(b)(i)(A) and (B), the Board may then notify applicant that environmental effects will be considered when Letter of Advice is requested and request information on environmental matters.	Under § 408.4(b)(i)(A) and (B), Engineering Division to determine whether proposed transaction may significantly affect the quality of the human environment in th United States, its territories or possessions and Office of the General Counsel to determine whether requested Eximbank assistance is a major action.
Issuance of Letters of Advice (Approval of Financial Assitance).	When request is received	When the Board of Directors meets to consider request	(If no P.c. has been issued, key offices will make determinations mentioned above.) Engineering Division to collect, prepare or arrange for preparation of all environmental documents.

§ 408.6 Typical classes of action.

(a) Section 1507.3(c)(2) of the NEPA Regulations in conjunction with § 1508.4 thereof requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

Actions normally requiring EIS's	Actions normally requiring assessments but not necessarily EIS's	Actions normally not requiring assessments or EIS's
None	Requests for Eximbank assistance in the form of direct loans in support of Transactions for which determinations under § 408.4(b)(i) (A) and (B) above may be affirmative.	Requests for Eximbank assistance in the form of insurance or guarantees.

(b) Eximbank will independently determine whether an EIS or an environmental assessment is required where—

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 408.7 Environmental information.

Interested persons may contact the Office of the General Counsel regarding Eximbank's compliance with NEPA.

Warren W. Glick,

General Counsel.

[FR Doc. 79-15416 Filed 5-16-79; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Ch. I]

Informal Airspace Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Informal airspace meeting.

SUMMARY: The Federal Aviation Administration (FAA) will hold an informal airspace meeting in St. Paul, Minnesota for the purpose of discussing a plan by the FAA to raise the ceiling of the Minneapolis Terminal Control Area (TCA) from the existing 8,000 feet AMSL to 12,500 feet AMSL. This alteration will also require expansion of the TCA upper level from 20 NM to 40 NM radius of Minneapolis-St. Paul International Airport. No changes to the present floor are anticipated.

DATE: June 6, 1979, 7 p.m. local time.

ADDRESS: Fort Snelling Federal Building, room 568, Fort Snelling, St. Paul, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Doyle W. Hegland, Airspace and Procedures Branch (AGL-530), Air Traffic Division, Great Lakes Region; Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (telephone 312/694-4500 extension 456 or 360).

SUPPLEMENTARY INFORMATION: The purpose of this informal airspace meeting is to offer all persons likely to be affected by this alteration the opportunity to present their views, and to assist FAA in the preparation of an airspace docket that will accomplish the improved safety objectives with the least possible impact on the airspace users.

No formal minutes or transcripts will be taken, however, anyone may submit written comments before or during the meeting which will be made a matter of record if they so desire. This action will not prevent interested persons from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed.

Raymond C. Finnen,

Chief, Airspace and Procedures Branch, AGL-530.

[FR Doc. 79-15486 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Ch. I]

Informal Airspace Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Informal airspace meeting.

SUMMARY: The Federal Aviation Administration (FAA) will hold an informal airspace meeting in Cleveland, Ohio for the purpose of duscussing a plan by the FAA to raise the ceiling of the Cleveland Terminal Control Area (TCA) from the existing 8,000 feet AMSL to 12,500 feet AMSL. This alteration will also require expansion of the TCA upper level from 20 NM to 40 NM radius of Cleveland Hopkins Airport. No changes to the present TCA floor are anticipated.

DATE: June 12, 1979, 7:30 p.m. local time.

ADDRESS: NASA Office Auditorium, 21000 Brookpark Road, Cleveland, Ohio 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Doyle W. Hegland, Airspace and Procedures Branch (AGL-530), Air Traffic Division, Great Lakes Region-FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone: (312) 694-4500, extension 456 or 360.

SUPPLEMENTARY INFORMATION: The purpose of this informal airspace meeting is to offer all persons likely to be affected by this alteration the opportunity to present their views, and to assist FAA in the preparation of an airspace docket that will accomplish the improved safety objectives with the least possible impact on the airspace users.

No formal minutes or transcripts will be taken. However, anyone may submit writen comments before or during the meeting which will be made a matter of record if they so desire. This action will not prevent interested persons from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed.

Raymond C. Finnen,

Chief, Airspace and Procedures Branch, AGL-530.

[FR Doc. 79-15487 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Ch. I]

Informal Airspace Meeting

AGENCY: Federal Aviation Administration.

ACTION: Informal airspace meeting.

SUMMARY: This notice announces an informal airspace meeting to discuss a proposed alteration to terminal control area (TCA), McCarran International Airport, Las Vegas, Nevada.

DATE: June 19 and 27, 1979, 7 p.m.

ADDRESS: Student Union Building, University of Nevada, Las Vegas, Main Ball Room, South Maryland Parkway, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Dale D. Shriver, Assistant Chief, Las Vegas Tower, 5995 South Paradise Road, Las Vegas, Nevada, 89119; telephone (702) 385-6559.

SUPPLEMENTARY INFORMATION: No verbatim minutes or transcripts will be taken. However, participants may submit written comments to be made a matter of record if they so desire. This action will not prevent participants from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed. Public comments are invited at this meeting on development of the proposed TCA configuration.

Lawrence C. Fortier, Jr.,

Chief, Airspace and Procedures Branch, AWE-530, Western Region, Federal Aviation Administration.

[FR Doc. 79-15504 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 39]

Airworthiness Directives; Boeing Model 737-200 (Advanced) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

AGENCY: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking proposes to require a flap position switch setting of greater than 25° to sense the ground proximity warning (GPWS) computer to a landing configuration on all Boeing Model 737-200 (ADV) airplanes. A flap position switch setting of greater than 25° will provide ground proximity warning modes 2A and 4B, which are required by TSO-C92a or TSO-C92b.

At the present time, the flap position switch is set at 15° to sense a landing configuration on many 737-200 airplanes. With the flaps set at 15°, GPWS Mode 4B is inhibited far out in the approach and not just prior to touchdown, as intended by TSO requirements. With "Mode 4B-inadvertant terrain" inhibited, the GPWS will not provide warning of inadvertant terrain closure to the flight crew. In addition to the loss of Mode 4B, Mode 2A is suppressed to Mode 2B. With Mode 2A suppressed to Mode 2B, "Mode 2—excessive terrain closure rate" warning time is significantly decreased.

DATES: Comments must be received on or before July 31, 1979.

Proposed effective date: September 15, 1979.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Northwest Region, Office of Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 79-NW-12-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION, CONTACT: Mr. Charles H. Mackal, Systems and Equipment Section, ANW-213, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2500.

SUPPLEMENTARY INFORMATION: The ground proximity warning system (GPWS) is designed to provide required warnings to the flight crew of impending hazardous flight conditions. The required aural and visual warnings to the flight crew are automatic without input from the flight crew. Mode 2 provides warning of excessive terrain closure rate. Mode 3 provides warning of altitude loss after takeoff. Mode 4A provides warning of inadvertant closeness to the ground when the airplane landing gear has not been lowered. Mode 4B provides warning of inadvertant proximity to the ground if the airplane flaps have not been lowered to landing position. Mode 5 provides warning of inadvertant flight below the glideslope guidance beam during the approach to land.

Landing flap position input to the GPWS computer is necessary to provide the required logic to the computer that the proximity to the ground is safe because the airplane is about to land. A 15° flap position is an approach flap and greater than 25° is a landing flap for the great majority of Boeing 737-200 airplane operations.

The GPWS computer will not provide the Mode 4B warning with the flap position switch set at 15° flap, rather than at greater 25° flap, because it senses the airplane is ready to land when in fact it is not.

The same thing happens to the GPWS computer in Mode 2, when the computer senses that the airplane is ready to land. The result is that the Mode warning time is significantly reduced and the pilots may not have the time necessary to make safe flight path corrections.

This potentially unsafe condition can be corrected by changing the flap position switch to sense the landing flap position of greater than 25° instead of 15°. This notice of proposed rulemaking proposes to require this change on all Boeing 737-200 advanced airplanes.

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availablity of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 79-NW-12-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposed to amend Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Boeing: Applies to all Model 737-200 (advanced) airplanes with GPWS flap position switches sensing less than 25° as landing flaps; certificated in all categories. Compliance required as indicated. Accomplish the following:

Within the next 1,000 hours time-in-service from the effective date of this Ad, change the ground proximity warning system flap position switch to sense flaps greater than 25° as the landing flap position.

(Secs. 313(a), 601, and 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington, on May 7, 1979.

C. B. Walk, Jr.,

Director, Northwest Region.

[FR Doc. 79-15225 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[14 CFR Parts 221, 302, and 399]

Construction, Publication, Filing, and Posting of Tariffs of Air Carriers and Foreign Air Carriers; Change in Tariff Justification; Rules of Practice in Economic Proceedings; Revision of Complaint Procedures; Statements of General Policy

Dated: May 10, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Revision of Proposed Rule.

SUMMARY: The Board recently proposed extending the policies developed for the *Domestic Passenger-Fare Rulemaking* to the U.S. Mainland-Hawaii and Intra-Hawaii ratemaking entities. The policies allow carriers to experiment with price/quality of service options tailored to their individual costs and the requirements of individual markets. Under the new policies, ceiling fares are established as a base from which carriers are permitted to set fares upward and downward within specified zones. This notice revises the ceiling proposed for the Intra-Hawaii entity so that more flexibility to price compete is afforded carriers operating there.

DATES: Comments due by: May 29, 1979. Reply comments due by: June 19, 1979.

Comments should be incorporated with those requested in EDR-373/PDR-64/PSDR-57. Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable. All filed comments must include a full presentation of all evidence and arguments upon which the commenter wishes to rely in support of his position, or in rebuttal of facts relied upon by the Board. We have decided that all relevant issues can be determined on the basis of written comments, and that oral evidentiary procedures will not be required.

ADDRESSES: Twenty copies of comments should be sent to Docket 35119, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Steven K. McKinney, Trial Attorney, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-6064.

SUPPLEMENTAL INFORMATION: By Proposed Rule (PSDR-57/EDR-373/PDR-64; 44 FR 18688, March 29, 1979), (hereafter PSDR-57), the Board proposes to extend the policies developed for the domestic passenger-fare entity to the U.S. Mainland-Hawaii and Intra-Hawaii ratemaking entities. Under those policies, ceiling fares are established as a base from which carriers are permitted to set fares upward or downward within specified zones with only a very limited threat of suspension by the Board. In the Notice of Proposed Rulemaking, the Board tentatively proposed to use standard industry fare levels as described in the Airline Deregulation Act of 1978 (Pub. L. 95-504) for the ceilings on the no-suspend zones. For the U.S. Mainland-Hawaii entity, the proposed ceilings are the day-of-week peak fares in effect on July 1, 1977, updated for interim cost changes, as required by the Act. For the Intra-Hawaii entity, the proposed ceilings are the first-class fares in effect on July 1, 1977, updated for interim changes in costs.

It has recently come to our attention that fare increases in tariff filings on behalf of Aloha Airlines and Hawaiian Airlines have in the past lagged behind the levels justified by the costs of those carriers. The carriers did not, for example, increase fares between February 1, 1976 and October 1, 1977, a full 17-month period in which average fares drifted behind the maximum permissible levels which would have been permitted under Board policy then in effect by 8-10 percent.[1]

We have some doubt that the standard industry fare levels as defined in section 1002(d)(6) of the Federal Aviation Act were intended by Congress to perpetuate this state of affairs.[2] The model for the legislation on standard industry fare level was the fare formula prescribed by the Board in Phase 9 of the *Domestic Passenger-Fare Investigation*. That formula was designed to permit carriers whose costs equalled the industry average to earn a full ratemaking return on their investment, and this meaning was assumed by Congress during discussion of the term "standard industry fare level."[3] Our analysis, however, shows that the standard industry fare level in effect on July 1, 1977, proposed in PSDR-

[1] See attachment.

[2] See our discussion on page 10 of PSDR-57 on standard industry fare level in light of its legislative history. After July 1, 1977, only operating costs are recognized.

[3] *Ibid.*

57 for the Intra-Hawaii carriers fell short of the maximum permissible level necessary to allow them to recover their average costs including a full return on investment.

We now revise the proposal in PSDR-57 so that the base ceiling fares for purposes of the suspend-free zone for the Intra-Hawaii entity would be 8–10 percent above the standard industry fare levels for that entity. This modification will thus start the periodic computation of allowable fare changes on a foundation which reflects the levels at which fares could have been set by the carriers involved using the methods that established the SIFL for the continental U.S. We believe that this comports with the assumptions made in Congress. Although the ceiling, as revised, for this entity would be slightly higher than the standard industry fare level, the Board still has the authority to establish ceilings above the standard industry fare levels. That authority was preserved in the Airline Deregulation Act of 1978, P.L. 95–504.[4]

The revised proposed ceiling does not necessarily mean that carriers will increase fares on the average to the levels authorized. History suggests that these markets may be competitive, notwithstanding the two-carrier market structure. The previously described lag in fare increases proposed by Aloha and Hawaiian suggests that self-regulatory forces may be at work over their generally duplicative route systems which by inference might be attributed to a competitive marketplace.

The increment to be utilized for establishing the ceiling above the standard industry fare level will be in the 8–10 percent range depending upon the allowable rate of return adopted. There is no prescribed ratemaking return on investment (ROI) for the Intra-Hawaii entity because the Board has not conducted an investigation of fares in that entity which provides a convenient standard. Under the circumstances, both the 12 percent ROI used to determine costs for domestic 48-state trunks and the 12.35 percent applicable to local service carriers should be considered as alternatives for this purpose by the commenters.[5] The costs used to construct the ceilings for the entity would not be otherwise adjusted.

In all other respects, the rule proposed in PSDR–57 would remain the same. The upward and downward flexibility proposed there for the Intra-Hawaii markets would be based upon the ceilings proposed here. For example, in two-carrier markets, the Intra-Hawaii carriers would have additional upward flexibility of five percent on top of the ceilings proposed. Overall, the greater fare flexibility afforded by the proposed ceiling, which includes the percentage increment of 8–10 percent, is in keeping with our purpose to rely more on market forces to set fares. The incumbent carriers affected will have more choices to price compete over a wider range with little risk of suspension; consumers will benefit from the enhanced competitive environment which encourages pricing tailored to peak/off-peak demands; and potential entrants will have more incentive to take advantage of the opportunities provided.

The adjustment proposed would be applied to the first-class fares in effect in the Intra-Hawaii entity on July 1, 1977. From this base, subsequent adjustments in the ceiling fare level would be made strictly on the basis of changes in operating costs according to the method set forth in section 1002(6)(B) of the Act.

Accordingly, the Civil Aeronautics Board invites comments on the amendment of 14 CFR Part 399, *Statements of General Policy,* that was proposed in EDR–373/PDR–64/PSDR–57 (14 FR 18688, March 29, 1979) with the following variation:

In proposed new § 399.34, the third sentence of paragraph (b)(1) would be revised by adding "in effect on July 1, 1977, plus ——— percent" with a number between eight and ten, so that it reads:

§ 399.34 Passenger-Fare policies for other entities.

It is the policy of the Board to extend the principles of fare flexibility established for domestic fares to other equities as follows:

* * * * *

(b) * * *

(1) * * * Ceiling fares for the Intra-Hawaii entity should be based upon the first-class fares in effect on July 1, 1977, plus ——— percent, adjusted for changes in the actual operating cost determined in accordance with the changes for all other entities.

* * * * *

(Secs. 204, 403, 404, and 1002 of the Federal Aviation Act of 1958, as amended by Pub. L. 95–504; 72 Stat. 743, 758, 760, and 788, 92 Stat. 1741; 49 U.S.C. 1324, 1373, 1374, 1482; and 5 U.S.C. 533.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[4] See discussion in PSDR–57 on pp. 6–8.

[5] These ratemaking ROI's are implicit in the *DPFI* fare formulas now used as ceilings for domestic 48-state fares.

Appendix A

Standard Industry Fare Level—48 States and Intra-Hawaii

Date (1976 Forward)	Fare increase (percent) 48 States	Fare increase (percent) Intra-Hawaii
February 1, 1976	1.0	7.0
March 1, 1976	2.0	
May, 1976	2.0	
September 15, 1976	2.0	
February 1, 1977	2.0	
July 15–August 15, 1977	[1] 2.0	
September 15, 1977	2.0	
October 1, 1977		8.0
November 1, 1977	1.0	
April 15, 1978		7.5
May 1, 1978	3.0	
November 15, 1978	3.2	
February 1, 1979		3.5
May 15, 1979	4.0	
June 1, 1979		3.4
Cumulative [2]	1.2574	1.2425
Cumulative factor effective May 15, 1979 [3]		1.50975
Cumulative factor July 15, 1977		1.30895
Percent increase		15.34

[1] Two possible fare increases—.7 percent July 15 and 1.3 percent August 15, or 2.0 percent August 15.

[2] From February 1, 1976, assuming 48-states and intra-Hawaii fare levels reflect cost of service at a 12.0 percent return as of that date.

[3] 48-state fare increases from 1974 to present.

Appendix B.—*Adjustment of the Intra-Hawaiian Fare Level July 1, 1977, To Reflect Cost at 12.0 Percent Return*

	Regulatory actual Y.E. March 1977			Cost inflation adjusted to July 1, 1977			
	Aloha	Hawaiian	Total	Aloha	Hawaiian	Total	July 1, 1977 at 12.0% R.O.I.
RPM's (000)	321,578	404,793	726,371	321,578	404,793	726,371	726,371
ASM's (000)	489,128	638,050	1,127,178	489,128	638,050	1,127,178	1,127,178
Load Factor (%)	65.75	63.44	64.44	65.75	63.44	64.44	64.44
Yield ($)	$0.1427	$0.1453	$0.1441	$0.1427	$0.1453	$0.1441	$0.1604
Oper. Revenue—Total	$47,648	$71,599	$119,247				
Passenger Related Revenue	$46,301	$59,942	$106,243	$46,301	$59,942	$106,243	$116,539
Operating Expense—Total	$45,195	$68,836	$114,031				
Passenger Related Expenses	$43,858	$57,501	$101,359	[1] $45,937	[1] $59,013	[1] $104,950	$104,950
Operating Profit—Passenger	$2,443	$2,441	$4,884	$634	$929	$1,293	$11,589

Appendix B.—*Adjustment of the Intra-Hawaiian Fare Level July 1, 1977, To Reflect Cost at 12.0 Percent Return*—Continued

	Regulatory actual Y.E. March 1977			Cost inflation adjusted to July 1, 1977			
	Aloha	Hawaiian	Total	Aloha	Hawaiian	Total	July 1, 1977 at 12.0% R.O.I.
Interest Expense	$741	$2,583	$3,324	$741	$2,583	$3,324	$3,324
Earnings Before Tax	$1,702	$(142)	$1,560	$(377)	$(1,654)	$(2,031)	$8,265
Tax at 48 Percent	$817	$68	$749	$181	$794	$975	$3,907
Net Income	$885	$(74)	$811	$(196)	$(860)	$(1,056)	$4,208
Return Element	$1,626	$2,509	$4,135	$545	$1,723	$2,268	$7,622
Investment	$16,192	$47,326	$63,518	$16,192	$47,326	$63,518	$63,518
Return on Investment (%)	10.04	5.30	6.51	3.37	3.64	3.57	12.00

[1] Cost inflation to July 1, 1977; 1.047 percent for Aloha, 1.026 for Hawaiian. The differing rates for the two carriers, having equivalent aircraft and duplicate route structures is due primarily to a shift by Hawaiian to larger DC-9-50 aircraft starting in the fourth quarter of 1976.

[FR Doc. 79-15262 Filed 5-16-79; 8:45 am]
BILLING CODE 6320-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1145]

Hair Dryers Containing Asbestos; Proposed Rule to Regulate Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is presently investigating a potential health hazard from lung cancer and mesothelioma that could be associated with certain hair dryers containing asbestos. The Commission proposes, should regulatory action become necessary, to use the procedures available under the Consumer Product Safety Act (CPSA) rather than those of the Federal Hazardous Substances Act (FHSA). This rule is proposed because the CPSA remedies could be obtained more quickly.

DATE: Comments concerning this proposal must be received by June 1, 1979.

ADDRESS: Comments should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Beatrice C. Pitkin, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, (202) 634-7770.

Purpose

The purpose of this notice is to explain the Commission's preliminary determination to regulate any possible risk of unjury that may be associated with hair dryers containing asbestos, under the Consumer Product Safety Act (CPSA), (15 U.S.C. 2051 et seq.), rather than under the Federal Hazardous Substances Act (FHSA), (15 U.S.C. 1261 et seq.).

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) which governs such a preliminary determination provides,

A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act,* * * may be regulated under [the CPSA] only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act.

As explained below, the Commission has examined the applicable statutes and concluded that it is in the public interest to apply the remedies of the CPSA rather than the FHSA. In addition, as described here, the Commission believes it may be necessary to act very quickly on the basis of forthcoming information on asbestos-containing hair dryers. Therefore, the Commission believes that it is in the public interest to provide only a brief comment period, and requests that comments on its proposed rule be submitted by June 1, 1979.

Background

Based on information made available to the Commission in recent weeks, the staff of the Consumer Product Safety Commission is conducting an investigation of hair dryers to determine which of these products contain asbestos, and to determine the nature of any hazard that may be associated with hair dryers containing asbestos.

Asbestos is a group of fibrous minerals that are resistant to extreme heat. In many hair dryers, asbestos that has been pressed into asbestos paper has provided insulating barriers.

On the basis of present information, it appears that where asbestos is not locked into another substance such as plastic or resins, it can pose a health hazard as it degrades and releases microscopic-size asbestos fibers. The smallest fibers, generally less than three microns in diameter, are visible only through extreme magnification, such as by electron microscope. Such fibers are "respirable" in that, when inhaled, they can subsequently lodge deeply into the lungs. Respirable asbestos fibers have been associated in scientific studies with lung cancer and mesothelioma in the public at large. (Many of these studies are available through the Office of the Secretary as they are listed in the bibliography for the Commission rules banning certain patching compounds and artificial emberizing materials containing respirable free-form asbestos, 42 FR 63354, Dec. 15, 1977.)

CPSC staff estimates that approximately 50 to 60 million hair dryers are in consumers' hands or in the chain of distribution, and that a significant proportion of these dryers contain asbestos. To help determine which dryers contain asbestos, the Commission authorized the staff to issue Special Orders to all identifiable manufacturers (including importers) and private labelers of these dryers who may either manufacture or import the products. Initially, Special Orders requesting, among other matters, the brand names and model numbers of dryers containing asbestos, were issued to 14 of the largest manufacturers and private labelers who account for about 90% of the market in these dryers. Information on brand names and model numbers of hair dryers that do and do not contain asbestos has been published by the staff. Additional Special Orders have been sent to other manufacturers and private labelers. Orders will be sent to others as they are identified. As further information is received, it will also be made available to the public.

As part of the staff investigation, tests of dryers containing asbestos are being performed for CPSC by the National Institute of Occupational Safety and Health of the Department of Health, Education and Welfare, to aid in the determination of the nature of any hazard that may be associated with hair dryers containing asbestos, and to assist the Commission to seek appropriate remedies.

The Potential Problem

Information submitted by manufacturers and private labelers/retailers of hair dryers thus far, shows that a number of companies report that asbestos is not used in hair dryers manufactured or imported by them. The Commission staff is investigating whether other firms continue to manufacture or import asbestos-containing dryers. In addition, the staff believes that distributors and retailers have a substantial number of hair dryers containing asbestos available for sale and that consumers have many such dryers in their posession. If available information indicates that the asbestos in hair dryers present the potential hazards of lung cancer or mesothelioma as a result of foreseeable use of this product, it would be necessary to begin a proceeding that offers the speediest means possible to prohibit manufacture and importation and to remove asbestos-containing hair dryers from the channels of commerce and from consumers.

The Commission considered what remedies are available under the statutes it administers to address the problem of expeditious removal of the product if tests show that such steps would be necessary.

Potential Remedies

Federal Hazarous Substances Act (FHSA). 15 U.S.C. 1261–74. The FHSA has been an instrument for regulating hazards associated with carcinogens such as vinyl chloride, TRIS, and asbestos in general-use garments. The potential problem of hair dryers containing asbestos could be addressed under the banning procedures of the FHSA.

Banned hazardous substance—section 2(q)(1)(B). Under this section the proceeding for a regulatory determination that a hair dryer containing asbestos is a banned hazardous substance, is governed by section 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)), which provides for a 2-step proceeding. Initially, a proposed regulation is published and at least 30 days is provided for public comment. These comments must, of course, be reviewed and considered before issuing a final regulation. A person who would be adversely affected by any rule issued may file objections and request a hearing.

The second stage of this proceeding, if valid objections and a request for a hearing are received, is a formal adjudicative-type hearing. Upon completion of this hearing, a tentative final regulation is published by the Commission for public comment. After consideration of these comments, a final regulation is issued. During the period of this proceeding to determine whether a product is a banned hazardous substance, which may take a year or more, the product may continue to be sold.

Issuance of a final rule triggers the repurchase provisions of the FHSA (section 15, 15 U.S.C. 1274) which provide that products anywhere in the chain of distribution and in consumers' hands must be repurchased.

For a product that is the subject of a proceeding to determine whether it is a banned hazardous substance, section 2(q)(2) of the FHSA provides that the Commission can issue an order declaring that the product presents an imminent hazard to the public health. The effect of such an order would be to ban the product pending completion of the proceeding.

Consumer Product Safety Act (15 U.S.C. 2051–81). The CPSA has been used for regulating hazards associated with carcinogens in consumer products, such as the rule banning certain patching compounds and artificial emberizing materials containing respirable free-form asbestos (16 CFR Parts 1304, 1305).

Banned hazardous products—sections 8 and 9. A consumer product that presents an unreasonable risk of injury against which no feasible product safety standard under the CPSA could adequately protect the public can be declared a banned hazardous product by proposing a rule under section 8 (15 U.S.C. 2057). Section 9 procedures for providing public notice and comment, as well as for providing an opportunity for interested persons to make oral presentations, would apply. Findings on the need for the rule and its economic effects would have to be incorporated in any banning rule.

A final rule that bans a product under the CPSA does not require an adjudicative-type hearing. Therefore, it can probably take effect in considerably less time than a final rule under section 2(q)(1)(B) of the FHSA. However, there is no provision to repurchase products either in the chain of distribution or from consumers.

Notification and repair, replacement, or refund—Prohibition of manufacture and sale—section 15. This section provides remedies addressed to consumer products anywhere in the chain of distribution or in consumers' hands if the products have defects which create a substantial risk of injury to the public. At the choice of the manufacturer, distributor or retailer, these remedies include repair, replacement or refund. In addition, the manufacture, distribution and sale of the product can be prohibited. Requirements for notice to the public and recall of proudcts can be fashioned to encourage consumers to return their products.

Unless firms voluntarily consent to appropriate orders, an opportunity for an adjudicative proceeding before an administrative law judge must be provided before the Commission issues orders. However, section 15(g) (15 U.S.C. 2064(g)), provides that the Commission may apply to a U.S. district court for a preliminary injunction to prohibit the manufacture, distribution and sale of products that are the subject of a section 15 adjudicative proceeding. A preliminary injunction, if granted, is effective for 30 days and can be extended for 30-day periods during the period of the proceeding.

The remedies of notice and recall available under section 15 have the capacity for resolving the problem of removing hazardous products from the chain of distribution and from consumers' hands. In addition, use of the preliminary injunction during the adjudicatory proceeding, can provide a speedy resolution to the problem of preventing further distribution of the product to the public.

Conclusion

A review of these remedies indicates that remedies under the CPSA could be implemented more quickly than those under the FHSA. A banning rule under the CPSA requires only informal notice and comment rulemaking proceedings and an opportunity for interested persons to make oral presentations. In contrast, a banning rule under the FHSA may require a two-stage proceeding, consisting of informal proceedings, and more formal, adjudicative-type proceedings. The formal, second-stage must be provided if a valid objection and a request for a hearing is filed after an informal proceeding is concluded.

In addition, under the CPSA, it is possible to obtain a preliminary injunction that suspends distribution of a product which is the subject of a hearing to determine whether that product presents a substantial risk of injury. In contrast, a similar hearing under the FHSA to classify a product as a banned hazardous substance would permit continued distribution of the product unless sufficient evidence is available to issue an order of imminent hazard concerning the product.

Although the Commission has not yet decided to begin a proceeding concerning hair dryers containing asbestos, the Commission believes it may be necessary to act very quickly when additional information becomes available. Since, as discussed here, action under the CPSA can be implemented more quickly, the Commission preliminarily determines that it is in the public interest to regulate under the CPSA any hazards associated with hair dryers containing asbestos that may become apparent when further information is evaluated.

However, until any final determination under section 30(d) is made, the Commission notes that it is not precluded from regulating under the FHSA should information now being obtained indicate that action under the FHSA would be preferable.

Proposal

For the reasons stated above, the Commission preliminarily determines that it is in the public interest to regulate any possible risk of injury from asbestos-containing hair dryers under the CPSA rather than under the FHSA. Because it may be necessary for the Commission to quickly commence a proceeding, it is allowing only 15 days for public comment on this determination.

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

Accordingly, pursuant to provisions of the Consumer Product Safety Act (section 30(d), Pub. L. 92-573, 86 Stat. 1231, as amended 90 Stat. 510; 92 Stat. 3742; 15 U.S.C. 2079(d)), the Commission proposes that Title 16, Chapter II, Subchapter B, Part 1145, be amended by adding the following new §1145.7.

§ 1145.7 Hair dryers containing asbestos.

The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act rather than under the Federal Hazardous Substances Act any risk of injury that may be associated with inhalation of respirable asbestos fibers emitted in the airflow of hair dryers containing asbestos, because the Consumer Product Safety Act provides a more expeditious way of eliminating or reducing any such risk. Therefore, hair dryers that contain asbestos shall, if the Commission finds it necessary, be regulated under the Consumer Product Safety Act.

Interested persons are invited to submit, on or before June 1, 1979, written comments regarding this proposal. Written comments and any accompanying data or material should be submitted, preferably in 5 copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, third floor, 1111 18th Street, NW., Washington, D.C. during working hours Monday through Friday.

(Sec. 30(d), Pub. L. 92-573, 86 Stat. 1231, as amended, 90 Stat. 519, 92 Stat. 3742 (15 U.S.C. 2079(d)).)

Dated: May 11, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-15409 Filed 5-16-79; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-73-75]

Income Tax; Investment Credit—Qualified Progress Expenditures; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to qualified progress expenditures eligible for the investment credit.

DATES: The public hearing will be held on June 27, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by June 15, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-73-75), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 46 and 47 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Tuesday, January 30, 1979, at page 5910 (44 FR 5910).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by June 15, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1979.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-15448 Filed 5-16-79; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 100]

[CGD5-79-03R]

Establishment of Special Local Regulations for the City of Norfolk, Va., Harborfest Regatta

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed rule details the special local regulations which are intended to be established for the city of

Norfolk Harborfest. The special local regulations will be established to limit access to and control vessel traffic within the immediate vicinity of the Harborfest regatta. Due to the confined nature of the waterway and the expected congestion at the time of the regatta, these regulations are necessary to ensure safety of life on the Elizabeth River at Norfolk and Portsmouth, Virginia, immediately before, during and immediately after the regatta.

DATES: All comments received before May 25, 1979, will be considered.

Proposed effective dates: From 2:30 p.m. EDST until 11:00 p.m. EDST on June 16, 1979 and from 2:30 p.m. EDST until 5:00 p.m. EDST June 17, 1979.

FOR FURTHER INFORMATION CONTACT: LT R. T. VIA, Commander(b), Fifth Coast Guard District, Portsmouth, Virginia 23705, 804-398-6202.

SUPPLEMENTARY INFORMATION: The establishment of special local regulations to ensure the safety of life on the navigable waters of the United States immediately before, during and immediately after a regatta is authorized by 46 U.S.C. sec. 454 and 33 CFR 100.35. Accordingly, the following local regulations are proposed:

(a) *Location.* The area subject to these regulations is those waters enclosed by lines drawn across the Elizabeth River at latitude of 36°17'19" W.

(b) *Regulations.* (1) Except for participants in the Norfolk Harborfest or persons or vessels authorized by the Coast Guard patrol commander, no person or vessel may enter or remain in the area specified in paragraph (a) of these regulations.

(2) The operator of any vessel in the immediate vicinity of the area specified in paragraph (a) above of these regulations shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer; and

(ii) Proceed as directed by the Coast Guard officer or petty officer.

(3) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(4) The Coast Guard patrol commander is a commissioned officer of the Coast Guard, who has been designated by the Commander, Fifth Coast Guard District. The patrol commander will be stationed at the reviewing platform at Town Point.

(5) These regulations and other applicable laws and regulations shall be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

(46 U.S.C. sec. 454, 49 U.S.C. sec. 1655(b)(1); 33 CFR 100.35, 49 CFR 1.46(b))

Dated: May 7, 1979.

G. L. Kraine,

Captain, U.S Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 79-15439 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[43 Part 426]

Reclamation Rules and Regulations for Acreage Limitation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement on Proposed Rules and Regulations for Enforcing the 160-Acre Limitation on Federal Water Projects.

SUMMARY: The Secretary of the Interior intends to prepare an environmental impact statement on proposed rules and regulations for enforcing the 160-acre limitation on Federal water projects.

Proposed rules were published in the Federal Register on August 25, 1977, volume 42, No. 165. Thirteen public hearings were held on the proposed rules, resulting in testimony from 1,077 people and 10,767 letters of comment. The proposed rules have been revised taking into consideration public comment and will be published as part of the draft environmental impact statement in December 1980.

The scope of the environmental impact statement has already been determined following meetings conducted by the Bureau of Reclamation with representatives of the Department of Agriculture and the Interior, and the Council on Environmental Quality (CEQ). Records of testimony from departmental and congressional public hearings, testimony from civil actions in the U.S. District Court for the Eastern District of California, numerous articles in professional journals, and suggestions from interest groups were used to scope the environmental impact study. The proposed action will be the revised rules. A number of other alternatives will be discussed that bracket the range of potential impacts.

These environmental activities and the document preparation were ongoing activities at the time of the publication of the CEQ regulations pertaining to environmental impact statements. This notice of intent is being published in order to comply to the fullest extent practicable with these recent final regulations. Since the studies for the impact statement are well underway, no additional scoping meetings will be held. An outline of the draft environmental impact statement is available on request. Suggestions from the public are welcome.

FOR FURTHER INFORMATION CONTACT: Vernon S. Cooper, Special Projects Office, O&M Policy Staff, Bureau of Reclamation, Department of the Interior, 18th and C Street NW., Washington, DC 20240, (202) 343-2148.

Dated: May 11, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79-15460 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 192 and 195]

[Docket No. OPSO-39; Notice 76-3]

Transportation of Natural and Other Gas and Liquids by Pipeline; Pipeline Occupational Safety and Health Standards

AGENCY: Materials Transportation Bureau: DOT

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: This document withdraws an advance notice of proposed rulemaking in which the Materials Transportation Bureau (MTB) requested advice, recommendations, and information relating to the issuance of additional occupational safety and health standards for the protection of employees engaged in the construction, operation, and maintenance of pipeline systems and facilities used in the transportation of hazardous materials.

FOR FURTHER INFORMATION CONTACT: Ralph Simmons (202) 426-3047.

SUPPLEMENTARY INFORMATION: On December 22, 1976, MTB issued an advance notice of proposed rulemaking (Notice 76-3; 41 FR 56834, December 30, 1976) requesting information to aid in determining if additional standards governing occupational safety and health of employees engaged in the construction, operation, and maintenance of pipelines and facilities should be proposed for adoption. Forty-six persons responded to the request for information in Notice 76-3. Forty of these commenters objected to MTB issuing additional standards governing occupational safety and health standards for pipeline employees.

The primary reasons which the commenters advanced for their objections were that:

1. The Occupational Safety and Health Administration (OSHA) has promulgated regulations and has an ongoing enforcement policy for the regulation of the safety and health of employees in the work place.

2. MTB's primary concern is public safety accomplished by regulating the safety of pipeline systems and facilities through engineering design, construction, operations, and maintenance.

3. The issuance of additional occupational safety and health standards by MTB would be a duplication of OSHA's efforts and would increase the possibility of jurisdictional disputes.

4. Pipeline operators are presently meeting OSHA's standards, and for MTB to issue standards which might differ from those of OSHA could disrupt the operators' safety programs and safety training which would result in unnecessary cost.

5. There has been no demonstrable need shown for additional occupational safety and health standards by either a cost benefit analysis or through accident and injury reports.

Those commenters who favored MTB's adoption of additional occupational safety and health standards did so primarily for the following reasons:

1. That MTB is familiar with the operation of the pipeline industry.

2. That the pipeline industry is an industry with unique problems which are best regulated by people familiar with the industry and its problems.

3. OSHA rules are too specific; MTB should adopt rules that are of a performance type.

4. That one agency should be responsible for all safety and health activities in the pipeline industry.

Considering the fact that MTB's present standards development efforts are primarily directed to protecting the public safety by regulating pipeline design, construction, operation, and maintenance activities and absent any information that shows a compelling reason for MTB to issue additional standards governing occupational safety and health, MTB is of the opinion that it would not be productive to issue additional occupational safety and health standards, at this time. Therefore, MTB is withdrawing Notice 76-3.

The withdrawal of Notice 76-3 does not mean that MTB will not continue to issue occupational safety and health standards for employees where the safety and health of the employee is directly related to the safe operation of the pipeline system and facilities. Nor does it preclude the possibility that MTB will issue additional occupational safety and health standards in the future if, in its opinion, it would be productive to do so.

In consideration of the foregoing, Notice 76-3 is hereby withdrawn.

(49 USC 1672; 49 USC 1804; 18 USC 834; and 49 CFR 1.53, Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on May 9, 1979.

Cesar De Leon,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 79-15159 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-60-M

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Plan for the Bighorn National Forest; Sheridan, Johnson, Big Horn, and Washakie Counties, Wyo.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement on the Forest Plan for the Bighorn National Forest.

The Plan will provide policy and program direction for management of National Forest System lands under the administration of the Forest Supervisor.

The Plan will be sensitive to public issues. Public involvement sessions will be conducted and written comments will be solicited to help the Forest identify public issues. The Plan will be coordinated with local, county, State and other Federal agencies.

Craig W. Rupp, Regional Forester for Region Two, is the responsible official. Jack Booth, Forest Supervisor, is responsible for preparation of the Environmental Impact Statement and Forest Plan. Len Ruggiero is the Staff Officer directing the team in the devlopment of the Environmental Impact Statement and Forest Plan.

Based on the proposed regulations implementing the National Forest Management Act, it appears that the planning process will require about 2 years. The Draft Environmental Impact Statement is tentatively scheduled for completion in December 1980. A 90-day period for public review and comments will follow. The Final Environmental Impact Statement is tentatively scheduled for filing with the Environmental Protection Agency in August 1981 with implementation of the Forest Plan to begin in September 1981. These dates are subject to change based on requirements to be contained in the National Forest Management Act regulations, when finalized.

Comments on this Notice of Intent or on the Forest Plan should be sent to Jack Booth, Forest Supervisor, Bighorn National Forest, Columbus Building, 23 North Scott, P.O. Box 2046, Sheridan, Wyoming 82801, telephone (307) 672–2457.

Dated: May 8, 1979.

Craig W. Rupp,

Regional Forester, Rocky Mountain Region.

[FR Doc. 79-15385 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-11-M

Control of Roadside Vegetation; Olympic National Forest Soleduck Ranger District

An Environmental Assessment that discusses a vegetation control project along an estimated 300 side miles of Forest Service Roads on the Soleduck Ranger District in Clallam County is available for public review in the Forest Service Office in Forks, Washington. This project involves the use of the herbicide 2,4-D on 300 side miles and mechanical brushing 90 of those 300 miles before the herbicide application. Other roads on the Soleduck Ranger District will receive no treatment.

The Environmental Assessment indicates that this is not a major Federal action significantly effecting the quality of the human environment. Therefore, it has been determined that an environmental impact statement is not needed.

This determination was based upon consideration of the following factors, which are discussed in detail in the Environmental Assessment:

(a) The proposed herbicide project conforms to similar projects which were evaluated and approved in the 1978 Environmental Impact Statement, "Vegetation Management with Herbicides."

(b) No irreversible resource commitments or consequences will occur as a result of the herbicide project, the mechanical brushing, or the no action treatment.

(c) No apparent adverse cumulative or secondary effects are anticipated.

(d) No known threatened or endangered plants or animals exist within the affected area.

Some public concern has been expressed about the effects of herbicide applications on the natural environment. However, no adverse environmental effects are anticipated. All herbicide applications will be supervised by certified Washington State Pesticide Applicators. Only EPA approved herbicide formulations and application rates will be used.

No action will be taken prior to 30 days from the date this is published in the Federal Register.

The responsible official is Richard D. Beaubien, Forest Supervisor, Olympic National Forest, P.O. Box 2288, Olympia, Washington 98507.

Dated: May 9, 1979.

George E. Jansen,

Acting Forest Supervisor.

[FR Doc. 79-15386 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-11-M

Insecticide Study by Weyerhaeuser Co. on the Gifford Pinchot National Forest

Environmental assessment report that discusses the proposed trunk injection of the insecticide Orthene[R] on not more than 50 cone bearing trees in the Gifford Pinchot National Forest is available for public review in the Gifford Pinchot Supervisor's Office, 500 West 12th Street. This proposal is part of cone insect study that started in 1978 by Weyerhaeuser Co. The areas of confinement will be between 750 meters and 1500 meters in elevation on the Packwood, Randle, St. Helens, Ranger Districts.

The environmental assessment report indicates that there will be no significant affect on the quality of the human environment. Therefore, it has been determined that an environmental statement will not be prepared. This determination was based upon consideration of the following factors:

A. No irreversible or irretrievable effects on the environment.

B. No apparent adverse accumulative or secondary effects.

C. Physical and biological effects limited to trees treated.

D. No known threatened or endangered species of plants, animals or birds are recorded or observed in any treatment areas.

E. Flood plains or wetlands are not involved.

No action will be taken prior to 30 days from the date this Finding of No Significant Effect is published in the Federal Register.

Questions regarding this document should be sent to the Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, WA 98660, or Weyerhaeuser Co., Western Forestry Research Center, 505 N. Pearl Street, Centralia, WA 98531.

Dated: May 9, 1979.

Duane G. Tucker,

Acting Forest Supervisor.

[FR Doc. 79-15387 Filed 5-16-79; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Wheeling Creek Watershed, Pa.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Wheeling Creek Watershed.

The environmental assessment of this federally-assisted action indicates that the action may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this action.

The action concerns a plan for flood prevention, watershed protection, municipal and industrial water, and recreation. The planned works of improvement include these features already installed: five flood prevention dams and the accelerated land treatment program. Features yet to be installed include one flood prevention dam with municipal and industrial water storage and one flood prevention and recreation dam.

A draft environmental impact statement will be prepared for the remaining project features and circulated for review by agencies and the public. The SCS invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building and U.S. Courthouse, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone number (717) 782-2202.

Dated: May 9, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, (16 U.S.C. 1001-1008))

Joseph W. Haas,

Assistant Administrator for Water Resources.

[FR Doc. 79-15388 5-16-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 33465]

Continental-Western Merger Case; Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on June 25, 1979, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, *on or before June 6, 1979,* together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., May 11, 1979.

Craig Landsay,

Acting Secretary.

[FR Doc. 79-15254 Filed 5-16-79; 8:45 am]

BILLING CODE 6320-01-M

[Dockets 33112, 33283]

TXI-National Acquisition Case and Pan Am-National Acquisition Case; Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on June 22, 1979, at 9:30 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, *on or before June 1, 1979,* together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., May 11, 1979.

Craig Lindsay,

Acting Secretary.

[FR Doc. 79-15378 Filed 5-16-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Numerically Controlled Machine Tool Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Numerically Controlled Machine Tool Technical Advisory Committee will be held on Tuesday, June 5, 1979, at 10:00 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to numerically controlled machine tools, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has six parts:

General Session

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Nomination and election of a new Chairman.

(4) Discussion of accuracy parameters for numerically controlled machine tools.

(5) New business.

Executive Session

(6) Discussion of matters properly classified under Executive Orders 11652 and

12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (6), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act, relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under the Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Numerically Controlled Machine Tool Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on October 25, 1978 (43 FR 49828).

Copies of the minutes of the General Session will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone A/C 202-377-2583.

For further information, contact Mrs. Cornejo either in writing or by telephone at the address or number shown above.

Dated: May 14, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79-15446 Filed 5-16-79; 8:45 am]

BILLING CODE 3510-25-M

Management-Labor Textile Advisory Committee; Public Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Management-Labor Textile Advisory Committee will be held on June 5, 1979, at 1:30 p.m. in Room 6802, Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

The Committee was established by the Secretary of Commerce on October 18, 1961 to advise U.S. Government officials on problems and conditions in the textile and apparel industry and furnish information on world trade in textiles and apparel.

The agenda for the meeting will be as follows:

1. Review of import trends;
2. Implementation of textile agreements;
3. Report on conditions in the domestic market; and
4. Other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377-5078.

Dated: May 14, 1979.

Arthur Garel,

Director, Office of Textiles.

[FR Doc. 79-15471 Filed 5-16-79; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet on Tuesday, June 12, 1979, from 8:30 a.m. to 4:00 p.m. in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Md., and Wednesday, June 13, 1979, from 9:00 a.m. to 2:30 p.m. in Room 5851, Department of Commerce, Washington, D.C.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Ms. Kay Byerly, Office of the Director, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921-3413.

Dated: May 10, 1979.

Thomas A. Dillon,

Acting Director.

[FR Doc. 79-15316 Filed 5-16-79; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Council-Chairmen, Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Assistant Administrator for Fisheries will meet with the Chairmen and Executive Directors of the eight Regional Fishery Management Councils created under the Fishery Conservation and Management Act of 1976 (Public Law 94-265) to discuss: (1) plan review and development process; (2) budget; (3) Council role in fishery development; (4) enforcement; (5) joint ventures; and (6) other business.

DATES: The meeting will convene on Tuesday, June 19, 1979, at 9 a.m. and will adjourn on Wednesday, June 20, 1979, at approximately 3 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Sheraton Valley Forge Hotel, Route 363, King of Prussia, Pennsylvania 19406.

FOR FURTHER INFORMATION CONTACT: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: May 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-15315 Filed 5-16-79; 8:45 am]

BILLING CODE 3510-22-M

DEFENSE DEPARTMENT

Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Operation and Maintenance of Walter F. George Lake and Walter F. George Lock and Dam, Alabama and Georgia

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Description of Proposed Action:* The proposed action consists of the continuing operation and maintenance of the powerhouse, lock, dam, and reservoir, including associated buildings, water quality monitors, access roads, public use areas, and boat channels.

2. *Alternatives to the Proposed Action:* Alternatives to the proposed action are as follows: discontinue operation and maintenance with the existing structures and facilities remaining in place; discontinue operation of the powerhouse resulting in a more stable recreational pool; and eliminate the dam thereby returning the stream to a free-flowing state.

3. *Description of the Scoping Process:* The public and affected Federal, State, and local agencies, and other interested private organizations and parties are invited to respond to the DEIS when it is circulated for comment. Potential adverse impacts to be discussed in the DEIS are that the proposed action causes a small, temporary increase in turbidity resulting from periodic maintenance dredging operations in the reservoir; provides ideal habitat for the continued growth of aquatic plants and mosquitoes; creates minor problems resulting from the use of chemical pesticides to control nuisance aquatic plants and mosquito populations; causes the loss of fish food organisms due to fluctuating pool levels; interferes with the spawning migrations of anadromous and catadromous fish species; aggravates the pollution control problems of the Chattahoochee River Basin due to increased barge traffic and associated industrial activities; creates temporary turbid conditions during dredging operations; enhances the chances of death by accidental drowning and other water-related accidents; causes erosion problems in the resevoir and below the dam; and causes underseepage problems below the dam. Beneficial impacts to be discussed in the DEIS are that the proposed action provides electric power, aids navigation, provides recreational opportunities, regulates stream flow, and enhances fish and wildlife habitat.

4. *Scoping Meeting:* A scoping meeting is not planned, since the DEIS is almost ready for circulation to the public.

5. *DEIS Preparation:* It is estimated that the DEIS will be made available to the public in late May or June 1979.

ADDRESSES: Questions about the proposed action and DEIS can be answered by: Mr. James B. Hildreth, PD-EE, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, AL 36628.

Dated: May 8, 1979.

Charlie L. Blalock,

Colonel, CE, District Engineer.

[FR Doc. 79-15390 Filed 5-16-79; 8:45 am]

BILLING CODE 3710-CR-M

Visitor Assistance Program

AGENCY: Corps of Engineers, Department of Defense.

ACTION: Notice of new regulation on visitor Assistance.

SUMMARY: ER 1130-2-420, Visitor Assistance Program, is being adopted to replace ER 190-2-3 and ER 190-2-4. A more comprehensive management plan is required to achieve maximum assistance to visitors and reasonable protection of employees at Corps lakes. The new regulation will create a more standardized approach to visitor assistance. A copy of ER 1130-2-420 is available by writing: Corps of Engineers Publications Depot, 890 S. Pickett Street, Alexandria, VA 22304.

The effective date of ER 1130-2-420 is *10 May 1979.* For further information contact: HQDA (DAEN-CWO-R) (202) 693-7177, or write to the following address: HQDA-DAEN-CWO-R, 1000 Independence Ave., S.W., Forrestal Bldg., Washington, D.C. 20314.

For the Chief of Engineers.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 79-15393 Filed 5-16-79; 8:45 am]

BILLING CODE 3710-92-M

Military Traffic Management Command

Military Personal Property Claims Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Claims Symposium. This meeting will be held on 14 June 1979, at Headquarters, Military Traffic Management Command, Nassif Building, Room 714, 5611 Columbia Pike, Falls Church, Virginia 22041. The meeting will convene at 0900 hours and adjourn at approximately 1500 hours.

Proposed agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on mutual problems arising from claims for loss, damage or destruction of personal property while in transit or storage.

This Symposium will be open to the public to the extent that space limitations of the meeting space permit. Because of these limitations, interested parties are requested to reserve space by contacting the Commander, Military Traffic Management Command, ATTN: MT-PPM, Washington, DC 20315, telephone (202) 756-1808.

All interested persons desiring to submit topics to be discussed should submit them in writing to the address given in the preceding paragraph. Topics to be discussed should be received on or before 7 June 1979.

Dated: May 14, 1979.

John J. Durant,

Colonel, GS, Director of Personal Property.

[FR Doc. 79-15391 Filed 5-16-79; 8:45 am]

BILLING CODE 3710-08-M

Department of the Air Force

Advisory Committee on the Air Force Historical Program Meeting

May 10, 1979.

The Advisory Committee on the Air Force Historical Program will hold a meeting on June 14-15, 1979 from 9:30 a.m. to 4:00 p.m. at Bolling Air Force Base (AFB), D.C., Building 5681, 3rd Floor Conference Room.

The purpose of the meeting is to examine the mission, scope, progress, and productivity of the Air Force Historical Program and make recommendations thereon for the consideration of the Secretary of the Air Force.

The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and status of the field history program.

For further information, contact Lieutenant Colonel John A. Phillips, Executive, Office of Air Force History, Bolling AFB, D.C., telephone (202) 767-5764.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-15389 Filed 5-16-79; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary of Defense

Defense Science Board Task Force on Naval Surface Ship Vulnerability; Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Naval Surface Ship Vulnerability will meet in closed session on 5 June 1979 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs to the Department of Defense.

A meeting of the Defense Science Board Task Force on Naval Surface Ship Vulnerability has been scheduled for 5 June 1979 to review, evaluate, and summarize the vulnerability of naval surface ships with consideration of their effectiveness in carrying out future naval missions.

In accordance with 5 U.S.C. App. I 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

May 14, 1979.

[FR Doc. 79-15423 Filed 5-16-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Wilshire Oil Co. of Texas; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Wilshire Oil Company of Texas, 200 North Harvey, Oklahoma City, OK 73102. This Proposed Remedial Order charges Wilshire with pricing violations in the amount of $119,685.39, connected with the sale of crude oil during the time period September 1, 1973 through December 31, 1976 in the State of Oklahoma.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, Acting District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, TX 75235, Phone (214) 749-7626. On or before June 1, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M. Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 30th day of April 1979.

Romulo Garcia,

Acting District Manager of Enforcement, Southwest District.

Proposed Remedial Order

Introduction

On September 15, 1977, the Federal Energy Administration (FEA), the predecessor of the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), issued a Notice of Probable Violation ("Notice") to Wilshire Oil Company of Texas (Wilshire) pursuant to 10 CFR § 205.191. In that Notice, FEA described certain apparent violations of its regulations by Wilshire relating to the sale of certain domestic crude oil during the period of September 1, 1973 through December 31, 1976. The FEA alleged that Wilshire's actions resulted in probable overcharges to the purchaser of the domestic crude oil.

Wilshire filed a written reply to the Notice with the FEA on October 11, 1977. Since Wilshire did not request a conference on the Notice, none was held.

Based upon the information available to the ERA and after consideration of Wilshire's written response, the ERA finds that violations of CLC Phase IV price controls and Mandatory Petroleum Price Regulations have occurred as described herein and have resulted in overcharges of $119,685.39 to Koch Oil Company.

Regulatory Background

The pricing rules applicable to the sale of domestic crude oil were originally promulgated on August 17, 1973 (38 FR 22536, August 22, 1973) by the Cost of Living Council (CLC) pursuant to the authority vested in it by the Economic Stabilization Act of 1970, as amended, 12 U.S.C. Section 1904, note ("the Stabilization Act").[1] On December 4, 1973, the President of the United States issued Executive Order No. 11748 (38 FR 33575, December 6, 1973) establishing the Federal Energy Office (FEO). In CLC Order No. 47 (December 26, 1973) and CLC Order No. 47, Amendment 1 (January 30, 1974), the Chairman of the Cost-of-Living Council delegated the authority to the Administrator of the FEO to, among other things, ". . . make determinations and take action with respect to Phase II, Phase III, and Phase IV compliance and enforcement cases . . ." received after December 21, 1973. On December 27, 1973, the FEO adopted the CLC pricing rules for petroleum and petroleum products as part of what later became the Mandatory Petroleum Price Regulations. Subsequently, Congress enacted on May 7, 1974, the Federal Energy Administration Act of 1974, 15 U.S.C. Section 787 et seq., creating the Federal Energy Administration (FEA). This Act was implemented by the President on June 27, 1974, with the issuance of Executive Order No. 11790 (39 FR 23185, June 27, 1974) which transferred from FEO to FEA the CLC delegations and which delegated to FEA all the authority vested in the President by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. Section 751 et seq. ("the Allocation Act").

Pursuant to Section 301 of the Department of Energy Organization Act, 42 U.S.C. Section 7151, note, all functions vested by law in the FEA were transferred to, and vested in the DOE. Further, the authority previously granted to FEA by Executive Order No. 11790 was redelegated to DOE by Executive Order No. 12009 (42 FR 46267, September 15, 1977) effective October 1, 1977. In Delegation No. 0204-4 the Secretary of the Department of Energy delegated the responsibility for the administration of the pricing and allocation regulations to the Administrator of the ERA.

Thus, the FEO, the FEA, and the ERA have successfully been authorized to investigate, and deal with violations of the CLC price regulations for petroleum and petroleum products committed between August 19, 1973, and December 27, 1973, as well as violations of the Mandatory Petroleum Price Regulations occurring on or after December 27, 1973.

Applicable Regulations

Price Regulations Prior To February 1, 1976

The CLC initially established a two-tier price system for producers of domestic crude oil and in 6 CFR 150.354(c)(1) (subsequently 10 CFR 212.73(a)) stated in part:

... no producer may charge a price higher than the ceiling price for the first sale of domestic crude petroleum.

The ceiling price for the first sale of domestic crude petroleum was defined by 6 CFR 150.353 (subsequently 10 CFR 212.73(b)) which stated:

The ceiling price for a particular grade of domestic crude petroleum in a particular field is the sum of (i) the highest posted price at 6:00 a.m., local time, May 15, 1973, for that grade of crude petroleum at that field, or if there are no posted prices in that field, the related price for that grade of domestic crude petroleum which is most similar in kind and quality at the nearest field for which prices are posted; and (ii) a maximum of 35 cents per barrel.[2]

On November 30, 1973, the CLC formally adopted a definition of "posted price" which remained substantially unchanged under the FEA.[3] See 10 CFR § 212.31. "Posted price" was defined as:

A written statement of crude petroleum prices circulated publicly among sellers and buyers of crude petroleum in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field. (38 FR 33577, December 6, 1973)

In order to promote additional domestic crude oil production, the CLC provided in its regulations economic incentives for producers to increase their production. Subparagraphs (c)(2) and (3) of 6 CFR 150.354 set forth the Special Release Rule and the Released crude formula.[4] The Special Release Rule provided that "a producer of new crude petroleum produced and sold from a property may in the month produced, beginning with the month of September 1973, or in any subsequent month, sell that new crude petroleum without respect to the ceiling price." In the same subparagraph a limitation was imposed upon this authorization and was set out as follows:

However, if the amount of crude petroleum produced and sold in any month subsequent to the first month in which new crude petroleum was produced and sold, is less than the base production control level for that property for that month, any new crude petroleum produced from that property during any subsequent month may not be sold pursuant to this subparagraph until an amount of the new crude petroleum equal to the difference between the amount of crude petroleum actually produced from that property during the earlier month and the base production control level for that property for the earlier month has been sold at or below its ceiling price.

The Released Crude formula was an additional incentive for producers to increase their production over the incentives of the Special Release Rule and was based on the magnitude that the new crude oil production from a property exceeded the 1972 levels of production.[5] To qualify crude oil production for the monetary incentives provided by the Special Release Rule and the Released Crude formula, the CLC established certain prerequisites. The following CLC definitions which were adopted by FEO in 10 CFR 212.72 encompass these requirements and were set out in 6 CFR 150.354(b):

"Property" was initially defined by the CLC as ". . . the right which arises from a lease or from a fee interest to produce domestic crude petroleum."

"Base production control level" ("BPCL") for a particular month for a particular property is determined as follows:

(1) if crude petroleum was produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in the same month of 1972;

(2) if domestic crude petroleum was not produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in 1972 divided by 12.

"New crude petroleum" means the total number of barrels of domestic crude petroleum produced and sold from a property in a specific month less the base production control level for that property.[6]

Thus, the production from a "property" must exceed the monthly "BPCL" for that "property", plus any cumulative deficiency resulting from a failure to attain the BPCL in previous months before the producer is entitled to charge a price for any of the property's crude oil production above the ceiling price prescribed in 6 CFR 150.353 (10 CFR 212.73).[7]

Price Regulation Effective February 1, 1976

On February 1, 1976 the FEA modified the crude oil pricing system by establishing a regulated ceiling price for the first sale of new crude oil and stripper well crude oil. In 10 CFR 212.74(b) FEA provided that the upper tier ceiling price will be determined as follows:

The upper tier ceiling price for a particular grade of domestic crude oil in a particular field is (1) the highest posted price on September 30, 1975, for transactions in that grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; less (2) $1.32 per barrel.[8]

FEA adopted the ceiling price for domestic crude oil set out in 10 CFR § 212.73 as the lower tier ceiling price specified in 10 CFR § 212.73(b) (41 FR 4931, February 3, 1976).

Under the changed regulations, commencing February 1, 1976, the determination of new crude oil produced from a property for pricing purposes excluded any cumulative deficiency generated by the property's crude oil production prior to February 1, 1976. FEA also changed the regulatory provision defining the BPCL of a property to allow the producer after February 1, 1976 to elect to determine the BPCL based upon either the property's 1972 sales or its 1975 old oil sales.

Stripper Well Lease Exemption Regulations

From November 16, 1973 until February 1, 1976, crude oil from a stripper well property could be sold at exempt or market prices. In 6 CFR § 105.54(s)(1) the CLC provided that:

Effective November 16, 1973, the price charged for the first sale of domestic crude petroleum and petroleum condensates, including natural gas liquids produced from any stripper well lease is exempt.

The FEO and subsequently the FEA adopted the CLC's provisions on stripper well crude oil. See 10 CFR § 210.32 and 10 CFR §212.54. In 6 CFR § 150.54(s)(2) the CLC promulgated the definitions applicable to the stripper well lease exemption.[9] Initially a "stripper well lease" was defined as "a property whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids, per well did not exceed 10 barrels per day during the preceding calendar month." Effective November 27, 1973 the measurement period of "the preceding calendar month" was changed to "the preceding calendar year."[10]

The FEA promulgated several changes to the stripper well lease exemption. Effective January 1, 1975 FEA no longer permitted producers' treatment of condensate from gas wells as stripper well crude oil. In another change, on June 3, 1975, the FEA authorized producers to permanently certify a property as a stripper well lease once it qualified, based on any yearly measurement period after December 31, 1972, instead of the prior requirement that the producer certify each year that a property qualified as a stripper well lease based upon the property's production of the previous year (40 FR 22123, May 21, 1975). Then, beginning September 1, 1976 the measurement period to qualify as a stripper well lease was modified to reflect any preceding consecutive twelve month period beginning after December 31, 1972 (41 FR 48319, November 3, 1976).

From February 1, 1976 until September 1, 1976 stripper well crude oil prices were regulated by FEA and were limited to the upper tier ceiling price specified in 10 CFR 212.74(b). However, effective September 1, 1976 stripper well crude oil was again exempted from the FEA price controls and FEA adopted a new definition of property which allowed qualified reservoirs to be treated as separate properties after September 1, 1976.[11]

Company's Response

In its written Response to the FEA Notice, Wilshire contends the following:

1. The FEA conclusion that the Robberson 1-3 and 2-3 wells are producing from a single "property" is totally undocumented.

2. FEA Ruling 1977-1 provides for the treatment of the Robberson lease as two separate "properties." Robberson 1-3 and 2-3 wells have consistently and historically been treated as separate "properties" both physically and for accounting purposes. The lessor insisted that Wilshire treat the tract as two separate producing properties when Robberson 2-3 well commenced producing. Koch established a lease number for each well.

3. Wilshire should not be held liable for any overcharges incurred by the lessor. The lease agreement required Wilshire to deliver the royalty interest "in kind", i.e., crude oil, to the pipeline or purchaser for the account of the lessor. Wilshire did not make a "first sale" of the one-fifth royalty interest produced by Robberson 1-3 and 2-3 wells since that crude oil production was sold by the lessor to the purchaser.

ERA'S Consideration of the Company's Arguments

ERA's determination that the 160-acre tract covered by the oil and gas lease executed by R. W. Robberson and May Robberson on January 24, 1972 was a "property" for purposes of the CLC and FEA price regulations was derived by applying the clear language of the "property" definition to the facts in this case, i.e., and executed oil and gas lease covering the 160-acres of the Southeast Quarter of Section 3, Township 10N, Range 5W, Canadian County, Oklahoma. The firm's allegation that ERA's determination is totally undocumented has been considered and in light of the existence of an oil and gas lease, it has been determined that the firm has failed to demonstrate any merit in its allegation.

ERA has considered the firm's allegation that the Robberson "property" qualifies for treatment as two "properties" for regulatory purposes pursuant to FEA Ruling 1977-1. In applying Ruling 1977-1, DOE stated in *Carter Exploration Company*, 1 DOE Para. 80,248 (April 25, 1978) that:

> It should be noted that Ruling 1977-1 provides that single premises subject to distinct royalty ownership may appropriately be treated as multiple properties under the regulations. However, that modification to the general regulatory requirement that property determinations be based only on established rights to produce was intentionally limited to those situations in which separate accounting to royalty owners is mandated by the terms of the governing oil and gas lease. Accordingly, the FEA stated in Ruling 1977-2 that the departure from the general requirements regarding property determinations set forth in Ruling 1977-1: referred only royalty owners (and not to overriding royalty owners, working interest owners, or other interest owners) and therefore takes into account only the situation in which an operator is required, under a single oil and gas lease, to account separately to different royalty owners (whose interests are limited to specific identified portions of the premises, as delineated in the oil and gas lease) for production from corresponding identified portions of the premises granted in a single oil and gas lease. Ruling 1977-2, supra at 16,190.

ERA has reviewed the oil and gas lease establishing Wilshire's right to produce and found that the lease does not (1) require the lessee to account for the production from different oil wells separately, (2) specify the identified portions of the premises which Wilshire asserts as separate properties, or (3) require royalty payments to different royalty owners of specific identified portions of the premises.

Further, the firm has failed to demonstrate that the state requires Wilshire to account for the crude oil production separately for severance tax purposes.

Thus, even though Wilshire may have treated the tract as two separate properties since 1972, the base period for regulatory purposes, that treatment is not in and by itself sufficient to warrant separate property treatment for CLC and FEA regulatory purposes. ERA has determined, based on the information available to it and on the firm's arguments, that the Robberson property does not qualify for multiple properties under a single lease exception enunciated in Ruling 1977-1.

Wilshire's last contention asserts that Wilshire is not the "producer" of one-fifth of the crude oil production since the lease specifies that the lessor will take "in kind" royalty interest delivered to the credit of the lessor, free of cost, in the pipeline to which the lessee may connect its wells. Thus, Wilshire contends that it does not make a "first sale" of one-fifth of the crude oil production from the Robberson property and that ERA should not hold it liable for those sales.

The DOE position on this issue has been previously considered and stated. See *General Crude Company*, 4 FEA Para. 80,552 (October 22, 1976). Where the operator of a property acts as an agent for the other interests in the production, DOE may issue the Order to that operator.

Since the refund is to be accomplished by the sale of future production at a reduced price, Wilshire can act as the agent of the lessor in accomplishing the refunds of overcharges. ERA has therefore determined that Wilshire's arguments do not affect the appropriateness of the Order as drafted to effectuate the refunds.

ERA has fully considered Wilshire's arguments and has determined that the firm has failed to demonstrate any merit which would affect ERA's conclusions.

Findings of Fact

1. Pursuant to 10 CFR 205.201(a) FEA was authorized to "initiate investigations relating to compliance by any person with any rule, regulations, or order promulgated by the FEA."

2. FEA's examination of Wilshire's books and records indicated that during the audit period of September 1, 1973 through December 31, 1976 Wilshire operated the Robberson lease located in Canadian County, Oklahoma.

3. In applying the provisions of the CLC and FEA regulatory price controls on the first sale of domestic crude oil, a concept of "property" was adopted which reflected a right to produce oil and gas from a tract or premises.

4. On January 24, 1972, R. W. and May Robberson executed an oil and gas lease in favor of Wilshire, lessee. The lease included a 160-acre tract described as the Southeast Quarter of Section 3 of Township 10 North, Range 5 West.

5. An executed Division order covering the 160-acre tract was returned to Koch Oil Company (Koch), the crude oil purchaser, on September 1, 1972.

6. After the "property" has been identified it is then necessary to determine the "property's" Base Production Control Level ("BPCL") based upon the 1972 production.

7. As provided in the regulatory definition of "BPCL" prior to February 1, 1976, the BPCL is based upon the crude oil produced and sold each month of 1972 unless there were not sales during each month of 1972. Then, the BPCL is one-twelfth of the total crude oil produced and sold in 1972 from the property.

8. On August 24, 1972 the Robberson 1-3 well was completed into the Hunton-Bois D'Arc formation.

9. The well produced and Wilshire sold 31,930.66 barrels of crude oil during 1972 to Koch. See Attachment I.

10. On November 29, 1972 drilling was commenced on the Robberson 2-3 well. This well started producing on January 16, 1973 from the Hunton formation. While this well was drilled on the above described 160-acre tract, it was located in a different 80-acre spacing unit from the Robberson 1-3 well as provided for by the Oklahoma Corporation Commission (OCC) in its Cause CD No. 33434, Order No. 84129 dated March 12, 1971 and covering the Bois D'Arc formation.

11. Even though covered by a single oil and gas lease, Wilshire treated each 80-acre spacing unit as a separate "property" for CLC and FEA price regulations.

12. Pursuant to first 6 CFR § 150.354(c) and then 10 CFR § 212.74 crude oil production which exceeded the property's BPCL (and any cumulative deficiency) could be sold at unregulated or market prices. Additionally, for every barrel that qualified as "new" crude oil, with certain restrictions a barrel of "old" crude oil and could be sold at market prices.

13. Since the 80-acre spacing unit on which the Robberson 2-3 well was located did not have any producing crude oil wells during 1972, Wilshire treated all of the production from the 80-acre spacing unit as "new" crude oil during the audit period.

14. Wilshire sold Koch a total of 88,051.92 barrels of the crude oil production from the two wells during the audit period.

15. Wilshire received "new" crude oil prices for 49,543.93 barrels pursuant to 6 CFR § 150.354(c) and 10 CFR § 212.74.

Conclusions of Law

Based upon the considerations cited above, ERA concludes that:

1. Wilshire is a producer of domestic crude oil as that term is defined in 6 CFR § 150.352 (10 CFR § 212.31) and that, pursuant to 6 CFR § 150.354(a) (10 CFR § 212.71), its sales of domestic crude oil from the Robberson property during the audit period of September 1, 1973 through December 31, 1976 were subject to the regulatory pricing provisions set out in 6 CFR § 150.353-.354 and Subpart D of 10 CFR, Part 212.

2. In determining the "property" for CLC and FEA price regualtions, Wilshire was required to look to the oil and gas lease executed by R. W. and May Robberson on January 24, 1972 to determine the premises or boundaries of the "property" for regulatory purposes.

3. The January 24, 1972 oil and gas lease gave Wilshire the right to produce oil and gas from a 160-acre tract described as the Southeast Quarter of Section 3, Township 10 North, Range 5 West, Canadian County, Oklahoma.

4. The oil and gas lease did not provide for or specify that the property was to be segregated and reported separately to different royalty interests.

5. Wilshire has failed to demonstrate that during the audit period the lease qualified as two separate properties under any of the exceptions enuniciated in Rulings 1975-15, 1977-1 and 1977-2 nor has ERA found that the property qualified for such an exception.

6. The 160-acre tract described in the January 24, 1972 oil and gas lease is the "property" for purposes of the CLC and FEA price regulations during the audit period.

7. For purposes of the CLC and FEA price regualtions, Wilshire incorrectly treated the Robberson lease as two separate 80-acre properties.

8. The BPCL for the property is determined by dividing the 1972 crude oil sales of the Robberson 1-3 well, 31,930.66 barrels, by twelve.

9. ERA determined that the BPCL for the Robberson property was 2660.88 barrels per month from September 1, 1973 until February 1, 1976. See Attachment I.

10. Wilshire failed to consider the property's PBCL in its determination of "new" and "released" crude oil produced from the Robberson 2-3 well.

11. The posted price for the Robberson property's crude oil on May 15, 1973 was $3.85 per barrel.

12. Based upon the 1976 crude oil production of the Robberson property, the property qualified as a stripper well lease effective January 1, 1977.

13. Wilshire violated the provisions of 6 CFR § 150.354(c)(1) and then 10 CFR § 212.73(a) in its sales of crude oil produced from the Robberson 2-3 well at "new" crude oil prices.

14. As a result of Wilshire's failure to treat the crude oil production from the Robberson wells as coming from a single "property", Wilshire received from Koch $119,685.39 in excess of the amount that it was allowed to received under the CLC and FEA price regulations during the audit period of September 1, 1973 through December 31, 1976. See Attachment II for a summary of the computation of overcharges.

Disposition of Refunded Overcharges

This Proposed Remedial Order requires that the specified overcharges be refunded as the DOE shall direct. Proper distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR § 205.2) who actually suffered a loss as a result of the violations described herein receive appropriate refunds. The DOE recognizes that the complex marketing system of the petroleum industry makes it likely that overcharges initially incurred by persons may have been passed through as higher prices to subsequent purchasers or otherwise utimately offset through such devices as the Old Oil Allocation (Entitlements) Program 10 CFR § 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific adversely affected persons, in which case disposition of the refunds should be made in the general public interest by an appropriate means such as payment to the Treasury of the United States.

In this case, the ERA is presently unable to readily identify the extent, if any, to which particular persons have been adversely affected by the specified overcharges and thereby entitled to refunds. Accordingly, ERA proposes that the DOE reserve the right to determine the appropriate action to be taken with respect to the distribution of refunded overcharges.

Therefore, with regard to the final Remedial Order, the ERA proposes that one or more of the following actions be taken, as appropriate:

1. ERA may file with the Office of Hearings and Appeals a Petition for the Implementation of Special Refunds Procedures pursuant to 10 CFR Part 205, Subpart V, following which refunded overcharges will be disbursed only upon written order of the Office of Hearings and Appeals;

2. ERA may issue a directive oedering the distribution of overcharge refunds in specific amounts to specifically named "persons";

3. ERA may issue one or more Ancillary Orders pursuant to 10 CFR § 205.199I(b) requiring that a direct or indirect recipient of a refund pass through all or portion of the refund, on a pro rata basis, to those customers of the recipient who were adversely affected by the initial overcharges;

4. The Department of Energy, including the ERA, may direct refund of any amount of the identified overcharges directly to the Treasury of the United States pursuant to 10 CFR § 205.199I(a) if the DOE determines that in this case the persons adversely affected by the violation cannot reasonble be identified or paid or the amount of each person's loss is incapable of reasonable determination; or

5. The Department of Energy, including the ERA, may take such other actions as are found to be appropriate in order to ensure that amounts of overcharges refunded by Wilshire are distributed in a just and equitable manner.

Proposed Order

It is contemplated by this PRO that:

1. Wilshire shall refund overcharges in accordance with paragraph 3 hereof in the total amount of $119,685.39 together with interest accurued on unrefunded overcharges in accordance with the terms set forth in paragraph 2 hereof.

2. Wilshire shall compute interest on the amount of the overcharges from the time of each overcharge until such time as the overcharges are refunded at the direction of the DOE pursuant to paragraph 3 hereof. Interest shall be computed at the annual rates as published by the DOE and subject to periodic adjustments. The annual rates in effect through the present are as follows: six (6) percent through June 30, 1975; nine (9) percent from July 1, 1975 through January 31, 1976; seven (7) percent from February 1. 1976 through January 31, 1978; and six (6) percent beginning February 1, 1978. ERA will notify Wilshire by letter of any subsequent changes in the official interest rate.

3. Upon receipt of a written directive from the DOE, including the ERA, Wilshire shall make payment, or secure payment as directed pursuant to 10 CFR § 205.287(a), of the overcharge refunds and accumulated interest in the manner described in such directive. Payments shall be made, or security given, pursuant to such directive over the period of time and in accordance with the payment schedule set forth in paragraph 4 hereof.

4. Within ten (10) days of the effective date of this Order, Wilshire shall establish a special interest-bearing escrow account maintained at its own expense at a bank which has been chartered by a state agency or instrumentality or by the Comptroller of the Currency of the United States Treasury Department, and which in either case is a member of the Federal Reserve System:

(a) Within five (5) days of the creation of the escrow account Wilshire shall notify the purchaser of crude oil from the Robberson property in writing of the name and address of the bank and the identification number of the escrow account.

(b) Wilshire shall direct the purchaser of the crude oil to deposit into the above-cited escrow account all revenues in excess of one dollar per barrel from the Robberson property. These payments shall continue until the account contains the full amount of overcharges plus interest attributable to the overcharges.

(c) Within three (3) days of the date on which the escrow account is fully funded, Wilshire shall notify the purchaser of the Robberson property's crude oil production in writing that the requisite amount has been deposited in the escrow account.

(d) No disbursements or withdrawals of the funds in the account shall be permitted by the escrow agent without the express written directive of the ERA.

(e) Immediately upon receipt of a written directive from the ERA, the escrow agent shall disburse the funds in the escrow account in the manner and amount as directed by ERA. The escrow agent shall regard the directive issued by ERA as definitive and shall not in any way subject his adherence to ERA's directive to Wilshire's consent.

(f) Wilshire shall forward copies of the monthly statements for the escrow account to ERA at the address specified in paragraph 5.

(g) Within fifteen (15) days of the date on which the escrow account is established, Wilshire shall send a signed copy of the escrow agreement to ERA at the address specified in paragraph 5.

(h) Pursuant to paragraph 3 above, ERA may modify this escrow account procedure or direct another refunding procedure as it deems appropriate by written directive from ERA to Wilshire.

(i) It is contemplated by this Order that Wilshire will complete the restitution specified herein within twelve (12) months of the effective date of this Order unless directed otherwise in writing by DOE.

5. Wilshire shall maintain separate records showing compliance with this Order. Such records shall contain, at a minimum, the purchaser's name, transactions involved, interest computations, amounts refunded, descriptions and dates of such remedial actions. Wilshire shall submit copies of these records quarterly from the effective date of this Order until completion of the actions required by this Order to:

Jerry H. Adams, Audit Director, Oklahoma City Audit Group, Department of Energy, Economic Regulatory Administration, 200 N. W. 5th St., Suite 522, Oklahoma City, Oklahoma 73102.

6. This Proposed Remedial Order shall be effective immediately upon becoming a final order.

Review Procedures

The procedures for administrative review of this Proposed Remedial Order (PRO) are found in 10 CFR Part 205, Subpart O (§ 205.190 *et seq.*) (44 FR 7922, February 7, 1979). Some of these procedures are summarized below. You should, however, fully review the requirements of Subpart O if you wish to contest the issuance of the PRO as a final order.

Notice of Objection

If you wish to contest issuance of this PRO as a final order, you must file a Notice of Objection on or before June 1, 1979. The Notice of Objection must briefly describe how you would be aggrieved by the issuance of the PRO as a final order and must state your intention to file a Statement of Objections. If you fail to file a timely Notice of Objections you shall be deemed to have admitted the findings of fact and conclusions of law in the PRO and the PRO may be issued as a final order without further proceedings. A full statement of procedural requirements in connection with the Notice of Objection is provided in 10 CFR 205.193.

Statement of Objections

A Statement of Objections to a PRO must be filed within 40 days after service of the Notice of Objection. The Statement of Objections must set forth the basis for the objections to the issuance of the PRO as a final order and must otherwise meet the requirements of § 205.196.

Motions and Requests

Discovery may be conducted in conjunction with remedial order proceedings in certain cases. See § 205.198. A Motion for Discovery must show why discovery is necessary in order to obtain relevant and material evidence and why discovery would not unduly delay the proceedings. If you intend to file a Motion for Discovery, you must do so at the same time you file the Statement of Objections.

In addition, an evidentiary hearing may be convened in conjunction with remedial order proceedings, as appropriate, pursuant to § 205.199. A

Motion for Evidentiary Hearing must show that there is a genuine dispute over relevant and material issues of fact that would be more effectively resolved by personal presentation with opportunity for cross examination than through submission of written material. If you intend to file a Motion for Evidentiary Hearing, you must do so at the same time you file the Statement of Objections.

You are entitled, as a matter of right, to a hearing to present oral argument regarding the PRO, whether or not an evidentiary hearing is requested or convened, provided you make a timely request for such a hearing. See § 205.199A.

All notices, statements, motions, requests and replies in this proceeding must be filed with:

Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461.

In addition, copies of each filing must be submitted to:

Assistant General Counsel for Administrative Litigation, Office of General Counsel, Department of Energy, Room 7130, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Department of Energy, Economic Regulatory Administration, Attn: District Manager, Southwest District, P.O. Box 35228, Dallas, Texas 75235.

Failure to comply with this Order after it becomes effective shall constitute a separate violation for each day that such non-compliance continues, and shall subject you to the penalties and sanctions provided in 10 CFR 205.203. In addition, penalties and sanctions as described in that section also may be levied for each day that the violations described in this Order has occurred. If ERA considers it appropriate or advisable to compromise any civil penalties, ERA will so advise you pursuant to 10 CFR 205:203(b)(2).

You are hereby advised that this Proposed Remedial Order is subject to disclosure by the ERA pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. § 552 if a request for it is properly made by a member of the public.

Issued this 27th day of April 1979 at Oklahoma City, Oklahoma.

Jerry H. Adams,

Audit Director, Oklahoma City Audit Group, Department of Energy, Economic Regulatory Administration.

Footnotes

(1) The term "crude petroleum" and "crude oil" are used interchangeably herein.

(2) Effective December 19, 1973, the maximum was raised from $.35 per barrel to $1.35 per barrel (38 FR 34985, December 21, 1973). FEO and FEA adopted this CLC amendment.

(3) Prior to the CLC's formal adoption of a definition of "posted price," the traditional operation of the crude oil market included the use of posted field prices, a mechanism well known among buyers and sellers of crude oil throughout the world as: The announced price at which a crude oil purchaser will buy the oil (of specific quality) from a field. At one time the price was actually announced by a statement posted in the field. (More recently), the announcement is usually made in the newspapers. (Williams and Meyers, *Manual of Oil and Gas Terms* at p. 339)

It was in this context that CLC adopted the two-tier pricing system in August 1973. In the Notice of Proposed Rulemaking issued on July 19, 1973, the CLC indicated that the ceiling price for crude oil was to be "that particular field." (38 FR 19464, July 20, 1973). The posted price concept was selected because the ready availability of price bulletins provided a mechanism whereby producers and purchasers alike could be able to determine the ceiling price for any grade crude oil in any particular field. Although the August 19, 1973, Subpart L Petroleum Price Regulations did not contain a definition of posted price, the definition adopted on November 30, 1973, made it clear "that a posted price must be a publicly circulated written offer to purchase." (38 F.R. 33577, December 6, 1973). This requirement eliminated offers (even though written) to specific producers and thus a written contract would not qualify as a posted price since it represents an agreement between a buyer and a specific producer and is not a bona fide offer to purchase from all producers.

(4) Subparagraphs (c) (2) and (3) were adopted by FEO and republished as 10 CFR § 212.74 (a) and (b).

(5) On August 29, 1974 FEA modified the Released Crude provision to allow producers to sell one barrel of domestic crude oil at exempt crude oil prices for each barrel of new crude oil produced and sold from the property for that month up to the property's monthly BPCL for that month. FEA applied the modified provision in this audit.

(6) FEA modified the definition to clarify the concept of adjusting the current month's excess production over BPCL for any deficiencies in any prior month's attainment of the BPCL. Therefore, new crude petroleum is the property's monthly production less both the BPCL and the current cumulative deficiency. The current cumulative deficiency in BPCL crude petroleum is the total number of barrels by which production and sale of crude petroleum has been less than the BPCL, for all months in which production and sale of crude petroleum has been less than the BPCL subsequent to the first month in which new crude petroleum was produced and sold, minus the total number of barrels of domestic crude petroleum produced and sold in each prior month which was in excess of the BPCL for that month, but which was not classified as new crude petroleum because of this requirement to reduce the amount of new crude petroleum in each month by the amount of the current cumulative deficiency in BPCL crude petroleum. 39 FR 31622 (August 30, 1974).

(7) Recoupment of the deficiency is only required after the month when the property produces "new crude oil."

(8) In 41 FR 4931 (February 3, 1976) the FEA adopted the following definitions in imposing regulated ceiling prices for new and stripper well crude oil:

"Current cumulative deficiency" means: (1) prior to February 1, 1976, the total number of barrels by which production and sale of crude oil was less than the base production control level, for all months in which production and sale of crude oil was less than the production control level subsequent to the first month in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(2) Effective February 1, 1976, the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after February 1, 1976) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month after February 1, 1976, which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency.

"First sale" means the first transfer for value by the producer or royalty owner. With respect to transfers between affiliated entities, the "first sale" shall be imputed to occur as if in arms-length transactions.

"New crude oil" means, with respect to a specific property: (1) prior to February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the base production control level for that month, and less (B) the current cumulative deficiency;

(2) effective February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency since February 1, 1976; and

(3) shall not in either period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(2) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling.

"Old crude oil" means: (1) prior to February 1, 1976, the total number of barrels of crude oil produced and sold from a property in a specific month, less the total number of barrels of new crude oil for that property in that month, and less the total number of barrels of new crude oil for that property in that month, and less the total number of barrels of released crude oil for that property in that month;

(2) effective February 1, 1976, the total number of barrels of crude oil produced and sold from a property in a specific month, less the total number of barrels of new crude oil for that property in that month.

"Released crude oil" means an amount of crude oil produced from a property in a particular month prior to February 1, 1976, which is equal to the total number of barrels of new crude oil produced and sold from that property in that month. The amount of released crude oil for a property in a particular month shall not exceed the base production control level for that property in that month, and shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling.

In 41 FR 15566 (April 13, 1976) the FEA adopted the following definition of Base Production Control Level:

"Base production control level" means: (1) with respect to months ending prior to February 1, 1976:

(A) if crude oil was produced and sold from the property concerned in ever month of 1972, the total number of barrels of domestic crude oil produced and sold from that property in the same month of 1972;

(B) if crude oil was produced and sold from the property concerned in ever month of 1972, the total number of barrels of crude oil produced and sold from that property in the same month of 1972, divided by 12;

(2) with respect to months commencing after January 31, 1976, except as provided in § 212.76, either:

(A) the total number of barrels of old crude oil produced and sold from that property concerned during calendar year 1975, divided by 365, multipled by the number of days in the month in 1975 which corresponds to the month concerned; or

(B) if the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(1), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

(9) The following definitions were promulgated in 38 FR 32494 (November 26, 1973):

"Domestic crude petroleum" means crude petroleum produced in any of the several States, or the District of Columbia or from the "outer continental shelf" as defined in 43 U.S.C. 1331.

"First sale" means the first transfer for value by the producer or royalty owner.

"Property" is the right which arises from a lease in existence in 1972 or from a fee interest to produce domestic crude petroleum in existence in 1972 and is coextensive with that property used in § 150.354(b) for purposes of determining "base production control level."

"Average daily production" means the qualified maximum total production of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from a property during the preceding calendar month,* divided by a number equal to the number of days in that month* times the number of wells which produced crude petroleum and petroleum condensates, including natural gas liquids, from that property in that month.* To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

(10) The Trans-Alaska Pipeline Authorization Act (Pub. L. 93-153) specified in Section 406 that the exemption should be based on the preceding calendar month's production. Subsection 4(e) of the Allocation Act changed the measurement period to the preceding calendar year and the CLC adopted this change effective the date that the Act became law on November 27, 1973. (38 FR 34464, December 14, 1973.)

(11) In 41 FR 36171 (August 26, 1976) FEA promulgated the following definition:

"Property" means the right to produce domestic crude oil, which arises from a lease or from a fee interest. A producer may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil, provided that such reservoir is recognized by the appropriate governmental regulatory authority as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

Computations of the Base Production Control Level (BPCL) for the Robberson Property for 1972

Since there was no crude oil production on the property until August 1972, FEA utilized the regulatory provision to compute the BPCL which stated:

(2) If domestic crude petroleum was not produced and sold from that property in every month of 1972, the total number of barrels of domestic crude petroleum produced and sold from that property in 1972 divided by 12.

FEA determined and Wilshire has acknowledged in its Response that the Robberson property had 31,930.66 barrels of crude oil produced and sold during 1972. Therefore, the BPCL was 31,930.66÷12=2660.88 barrels.

In 41 FR 15566 (April 13, 1976) FEA modified the computation of the BPCL as follows:

(2) With respect to months commencing after January 31, 1976, except as provided in § 212.76, either:

(A) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or

(B) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

The total number of old crude oil produced and sold from the Robberson property during the calendar year 1975 was 19,471.68. Therefore, FEA made the the following computations: 19,471.68÷365=53.347 barrels.

	No. of days, daily average and BPCL
1975:	
January	31×53.347=1653.76
February	28×53.347=1493.72
March	31×53.347=1653.76
April	30×53.347=1600.41
May	31×53.347=1653.76
June	30×53.347=1600.41
July	31×53.347=1653.76
August	31×53.347=1653.76
September	30×53.347=1600.41
October	31×53.347=1653.76
November	30×53.347=1600.41
December	31×53.347=1653.76

Since the BPCL's based on 1975's production was lower than those based on 1972's production, FEA used the lower BPCL's in its computations for the period of February 1, 1976 through December 31, 1976.

[Case No. 660C00499]

Department of Energy,
Oklahoma City, OK 73102.

Declaration

I, David N. Burkett, employed by the United States Department of Energy as an Auditor, am primarily knowledgeable about the facts of the case set out in the Proposed Remedial Order (Case Number 660C00499) directed against Wilshire Oil Company of Texas. I hereby declare that, to the best of my knowledge and belief, the findings of fact contained in the Proposed Remedial Order are correct.

Dated: April 26, 1979.

David N. Burkett,
Auditor, Oklahoma City, Oklahoma, (405) 231-5081.

BILLING CODE 6450-01-M

*Effective November 27, 1973, the definition above was amended to reflect "the preceding calendar year" and "year" (38 FR 34464, December 14, 1973).

OPERATOR: Wilshire Oil Company
LEASE AND NUMBER: Robberson 1-3 & 2-3
COUNTY AND STATE: Canadian County, Oklahoma

PURCHASER: Koch Oil Company
FIELD: Sec. 3 10N 5W

DATE	BPCL	BARRELS SOLD	CUM DEF	(ALLOWABLE SALES BBLS) NEW	RELEASED	TOTAL	ACTUAL SALES	(SALES IN # BBLS	APPARENT VIOLATION) BONUS	OVERCHARGES	CUM OVERCHARGES
9/73	2660.88	5925.52	0.00	3264.64	2660.88	5925.52	3355.30	-2570.22	1.3000	-3341.29	-3341.29
10/73	2660.88	5935.80	0.00	3274.92	2660.88	5935.80	3377.30	-2558.50	1.8500	-4733.23	-8074.52
11/73	2660.88	4977.53	0.00	2316.65	2316.65	4633.30	2891.93	-1741.37	4.3000	-7487.89	-15562.41
12/73	2660.88	4952.21	0.00	2291.33	2291.33	4582.66	2638.81	-1943.85	4.3000	-8358.56	-23920.97
1/74	2660.88	4675.52	0.00	2014.64	2014.64	4029.28	2619.92	-1409.36	4.9000	-6905.86	-30826.83
2/74	2660.88	4219.44	0.00	1558.56	1558.56	3117.12	2387.26	-729.86	4.9000	-3576.31	-34403.14
3/74	2660.88	3437.33	0.00	776.45	776.45	1552.90	1868.46	315.56	4.9000	1546.24	-32856.90
4/74	2660.88	2880.30	0.00	219.42	219.42	438.84	1047.56	608.72	4.9000	2982.73	-29874.17
5/74	2660.88	4162.28	0.00	1501.40	1501.40	3002.80	2605.82	-396.98	4.9000	-1945.20	-31819.37
6/74	2660.88	3125.93	0.00	465.05	465.05	930.10	1562.57	632.47	5.3000	3352.09	-28467.28
7/74	2660.88	3156.82	0.00	495.94	495.94	991.88	1852.40	860.52	5.5000	4732.86	-23734.42
8/74	2660.88	3138.95	0.00	478.07	478.07	956.14	1579.01	622.87	5.5000	3425.79	-20308.63
9/74	2660.88	2897.01	0.00	236.13	236.13	472.26	1590.53	1118.27	5.9500	6653.71	-13654.92
10/74	2660.88	2868.46	0.00	207.58	207.58	415.16	1581.17	1166.01	5.9500	6937.76	-6717.16
11/74	2660.88	2871.05	0.00	210.17	210.17	420.34	1837.80	1417.46	5.9500	8433.89	1716.73
12/74	2660.88	2358.01	302.87	0.00	0.00	0.00	1310.54	1310.54	6.3000	8256.40	9973.13
1/75	2660.88	2816.48	147.27	0.00	0.00	0.00	1767.80	1767.80	6.5000	11490.70	21463.83
2/75	2660.88	1807.24	1000.91	0.00	0.00	0.00	1022.78	1022.78	6.8000	6954.90	28418.73
3/75	2660.88	2110.11	1551.68	0.00	0.00	0.00	1064.44	1064.44	6.8000	7238.19	35656.92
4/75	2660.88	2079.63	2132.93	0.00	0.00	0.00	1323.81	1323.81	6.8000	9001.91	44658.83
5/75	2660.88	1573.53	3220.28	0.00	0.00	0.00	1055.86	1055.86	6.8000	7179.85	51838.68
6/75	2660.88	1785.29	4095.87	0.00	0.00	0.00	1054.36	1054.36	7.0500	7433.24	59271.92
7/75	2660.88	1314.66	5442.09	0.00	0.00	0.00	793.51	793.51	7.5500	5991.00	65262.92
8/75	2660.88	1540.80	6562.17	0.00	0.00	0.00	763.10	763.10	7.7500	5914.03	71176.95
9/75	2660.88	1295.90	7927.15	0.00	0.00	0.00	793.24	793.24	8.0000	6345.92	77522.87
10/75	2660.88	1310.85	9277.18	0.00	0.00	0.00	528.66	528.66	8.0000	4229.28	81752.15
11/75	2660.88	788.04	11150.02	0.00	0.00	0.00	527.59	527.59	8.1500	4299.86	86052.01
12/75	2660.88	1049.15	12761.75	0.00	0.00	0.00	529.31	529.31	8.1500	4313.88	90365.89
1/76	2660.88	793.32	14629.31	0.00	0.00	0.00	531.50	531.50	8.1500	4331.73	94697.62
2/76	1493.72	778.10	0.00	0.00	0.00	0.00	262.62	262.62	6.6800	1754.30	96451.92
3/76	1653.76	705.57	0.00	0.00	0.00	0.00	521.90	521.90	6.7200	3507.17	99959.09
4/76	1600.41	787.13	0.00	0.00	0.00	0.00	265.01	265.01	6.7600	1791.47	101750.56
5/76	1653.76	788.56	0.00	0.00	0.00	0.00	527.78	527.78	6.7900	3583.63	105334.19
6/76	1600.41	521.77	0.00	0.00	0.00	0.00	261.07	261.07	6.8200	1780.50	107114.69
7/76	1653.76	258.27	0.00	0.00	0.00	0.00	258.27	258.27	6.8200	1761.40	108876.09
8/76	1653.76	518.12	0.00	0.00	0.00	0.00	257.29	257.29	6.8200	1754.72	110630.81
9/76	1600.41	526.75	0.00	0.00	0.00	0.00	267.13	267.13	6.8200	1821.83	112452.64
10/76	1653.76	531.07	0.00	0.00	0.00	0.00	531.07	531.07	6.8200	3621.90	116074.54
11/76	1600.41	519.43	0.00	0.00	0.00	0.00	259.46	259.46	6.8200	1769.52	117844.06
12/76	1653.76	269.99	0.00	0.00	0.00	0.00	269.99	269.99	6.8200	1841.33	119685.39

[FR Doc. 79-15166 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-C

[ERA Docket No. 79-CERT-004]

New Jersey Zinc; Action on Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that, on April 16, 1979, New Jersey Zinc Division of G+W Natural Resources Group, Nashville, Tennessee (Zinc) filed a fuel oil displacement "Application for Certification" with the Economic Regulatory Administration (ERA). The application was filed pursuant to Part 595, Title 10, Code of Federal Regulations.

On May 10, 1979, ERA informed Zinc by letter that its application was not covered by the ERA certification procedure and that Zinc could proceed at the Federal Energy Regulatory Commission (FERC) without any action by ERA. A copy of the letter, which details the reasons for the ERA action, is attached as an appendix to this Notice. In brief, the present ERA and FERC oil displacement rules (44 FR 20398, April 5, 1979, and 44 FR 17644, March 22, 1979, respectively) contemplate ERA certification only in conjunction with a pending, or soon to be filed, application of an interstate pipeline company with the FERC under section 7 of the Natural Gas Act to transport gas to an end user to displace fuel oil. These rules do not apply to situations, such as Zinc's, where FERC is being asked to lift a condition on an already existing FERC transportation certificate.

Issued in Washington, D.C., May 10, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

Appendix

Department of Energy

Washington, D.C. 20461, May 10, 1979.

Mr. Robert P. Marshall,

General Counsel and Secretary G+W Natural Resources Center, First American Center, Nashville, Tennessee.

Dear Mr. Marshall: This letter relates to the fuel oil displacement "Application for Certification" filed with the Economic Regulatory Administration (ERA) by New Jersey Zinc Division of G+W Natural Resources Group pursuant to Part 595, Title 10, Code of Federal Regulations. The application was filed with ERA on April 16, 1979 (ERA Docket No. 79-CERT-004).

The fuel oil displacement certification rule issued by ERA (44 FR 20398, April 5, 1979) and the related transportation rule proposed by ERA for issuance by the Federal Energy Regulatory Commission (FERC) (44 FR 17644, March 22, 1979) contemplate ERA certification only in conjunction with a pending, or soon to be filed, application of an interstate pipeline company with FERC under Section 7 of the Natural Gas Act to transport gas to an end-user to displace fuel oil. These rules do not apply to situations where FERC is being asked to lift a condition on an already existing FERC transportation certificate.

A review of your certification application indicates the natural gas involved has already been certified for interstate transportation by the Federal Power Commission. In addition, your counsel, John N. Nassikas, has informed us no new interstate pipeline company application will be filed with FERC to transport a new supply of gas to displace fuel oil. Accordingly, your certificate application is not covered by the ERA certification procedure and you may proceed at FERC without any action by ERA. If you have any questions, please contact James G. Beste, Office of the General Counsel, Department of Energy, at telephone (202) 633-8788.

Sincerely,

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

cc: Mr. John N. Nassikas.

[FR Doc. 79-15437 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER79-353]

Alabama Power Co.; Filing of Initial Rate Schedule

May 10, 1979.

The filing Company submits the following:

Take notice that Alabama Power Company on May 7, 1979, Tendered for filing an Agreement with The Electric Board of The City of Luverne, intended as an initial rate schedule. The filing is for the proposed substation located at Woodford Avenue and 5th Street in Luverne, Crenshaw County, Alabama. When the new 115 KV delivery point is energized, the existing Agreement dated July 16, 1973, for the 4 KV delivery point will be cancelled. The delivery point will be served at the Company's applicable revision to Rate Schedule MUN-1 incorporated in FERC Electric Tariff, Original Volume No. 1 of Alabama Power Company as allowed to become effective, subject to refund, by Commission order in FERC Docket 78-77.

Copies of the filing were served upon The Electric Board of The City of Luverne.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol St., N.E., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before, June 1, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15331 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-256]

Algonquin LNG, Inc. and Algonquin Gas Transmission Co.; Amendment

May 9, 1979.

Take notice that on April 16, 1979,[1] Algonquin LNG, Inc. (Algonquin LNG) and Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP78-256 a joint amendment to their application for a certificate of public convenience and necessity filed in said docket pursuant to Section 7(c) of the Natural Gas Act authorizing the increase in storage volumes for Valley Gas Company (Valley Gas), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that the temporary certificate issued, by the Commission on September 21, 1978, in this docket authorized Algonquin LNG to utilize its liquified natural gas (LNG) storage facilities at Providence, Rhode Island to receive, store and redeliver in liquid and gaseous phase, LNG belonging to certain participating resale customers. Algonquin Gas was authorized to redeliver through its existing pipeline, regasified volumes to certain of the participating resale customers on a basis which would not impair service to Algonquin Gas' other customers, it is asserted.[2] Petitioners state that no new facilities were required by either Algonquin LNG or Algonquin Gas to effectuate the proposal.

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[1] The application was initially tendered for filing on April 16, 1979; however, the fee required by Section 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until April 17, 1979, thus, filing was not completed until the latter date.

[2] Petitioners also request that the Commission grant an extension of the service authorized in the temporary certificate issued on September 21, 1978, for a period of one year, June 1, 1979 to June 1, 1980.

Petitioners' amendment requests authorization to increase storage volumes for Valley Gas. It is stated that both Valley Gas and the Connecticut Gas Company, to whom this service was rendered during the 1978–1979 season, have indicated that they again desire to receive storage and redelivery service during the forthcoming 1979–1980 season under the same terms and conditions agreed to for the service performed during the past season. It is stated that Connecticut Gas' service would continue at the level of 120,000 barrels of liquified gas and Valley Gas' service would increase from the presently authorized 30,000 barrels to 45,000 barrels of gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15332 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-126]

Arizona Public Service Co.; Compliance Filing

May 10, 1979.

Take notice that on April 30, 1979, the Arizona Public Service Company (APS) tendered for filing pursuant to Commission's Order of February 28, 1979, revised rates and revised statements A through P incorporating the 46% Federal income tax rate.

Moreover, this filing reflects the deletion from the costs allocated to resale customers of any payments relating to EPRI and LMFBR.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before June 1, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15333 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. ER77-484, and ER77-551]

Carolina Power & Light Co.; Order Allowing Interim Rates To Be Collected and Waiving Notice Requirements

Issued May 8, 1979.

By order of July 19, 1977, in Docket No. ER77-485, this Commission accepted for filing, suspended for five months and set for hearing the proposed RS-12 wholesale rate schedule of Carolina Power & Light Company (Carolina) for sales to 18 rural electric cooperatives, 24 municipals and 2 investor-owned utilities.[1] The proposed rate increase became effective, subject to refund, on December 29, 1977. The hearing in this proceeding has since been concluded and briefs have been submitted to the Presiding Administrative Law Judge.

On March 14, 1979, Carolina tendered for filing an interim rate schedule RS-12A to supersede the present schedule, subject to several conditions. Carolina requested a waiver of the Commission's notice provisions contained in Section 35.3 of the Commission's Regulations in order to allow the interim rate to become effective as of April 1, 1979.

Background

Schedule RS-12A is the result of a Stipulation, signed on March 16, 1978, by Carolina, the cooperative customers, certain muncipal customers and the Commission Staff, which states that they will be bound in Docket No. ER77-485 by the Commission's final order in an earlier Carolina rate case, Docket No. ER76-495, with regard to the following issues:

1. demand allocation factor method (*i.e.,* whether demand-related costs should be allocated on the basis of four coincident peaks, twelve coincident peaks, or an alternative method chosen by the Commission);
2. fuel stock allocation method;
3. interest expense synchronization;
4. depreciation rates; and
5. comprehensive interperiod tax allocation.[2]

None of the signatories waived the right to seek judicial review of the final Commission order in Docket No. ER76-495 regarding any issue. However, *pendente lite,* the signatories agreed to be bound by the Commission's determinations on all issues in the earlier rate case.

With regard only to the issue of demand allocation in Docket No. ER77-485, Carolina further stipulated that it would file a new interim rate in this proceeding, if (1) the Commission prescribed a method of demand allocation in its opinion in Docket No. ER76-495 different from that contained in the second filing, and (2) that different allocation method would result in a rate reduction. Within 14 days of a final Commission order in Docket No. ER76-495 meeting these two conditions, Carolina stipulated that it would file the interim rate to become effective prospectively, and also request waiver of Commission notice requirements. In return for Carolina's undertaking, the municipal and cooperative signatories agreed to withdraw their price squeeze allegations in Docket No. ER77-485 and Staff agreed not to raise this issue.

The stipulated interim rate is subject to the following conditions:

1. it may be superseded by a subsequent rate filing;
2. it may be modified if the method of demand allocation prescribed by final Commission order in Docket No. ER76-495 is reversed on review; and
3. it does not prejudice the customers' right to refunds, if the interim rate produces revenues in excess of those ultimately found just and reasonable, or Carolina's right to collect revenues in excess of those collected under the interim rate (up to the revenue level collectable under the rates originally filed), if the interim rate is lower than that ultimately approved by the Commission.[3]

The City of Fayetteville, North Carolina, a municipal customer and an intervenor in this proceeding, was not a signatory to the Stipulation. Two other wholesale customers, Laurel Hill

[1] By order of January 19, 1978, in Docket No. ER77-551, the Commission suspended and initiated hearing procedures on Carolina's proposed partial requirements rate. This proceeding was consolidated with Docket No. ER77-485.

[2] Independent of the outcome of Docket No. ER76-495 these parties also stipulated that plant in service should be calculated on the basis of the average of 13 monthly balances.

[3] Any additional revenues which Carolina might collect would first be obtained by offsetting the amount owed customers under any refund obligation.

Electric Company and Pinehurst, Inc., are neither intervenors nor signatories to the Stipulation.

Carolina's submittal of interim rate RS-12A is in compliance with the Stipulation, to reflect the 12-CP demand allocation methodology prescribed by the Commission in Opinion No. 19, *Carolina Power & Light Company* (August 2, 1978).[4] Waiver of notice requirements was requested.

Discussion

This case presents several questions which distinguish it from other proceedings in which we have permitted the substitution of an interim rate for the filed rate. The Stipulation does not purport to be the unanimous agreement of all RS-12 customers and allows the possibility that Carolina might retroactively increase the rate at the time of a final Commission order. The rate ultimately paid by signatories and non-signatories alike until final Commission action in these dockets might, therefore, be something other than that provided by express terms of RS-12A. In earlier orders concerning interim rates, we made it clear that the filing utility could not retroactively increase that interim rate; however, customers in those cases had not consented to such an arrangement.[5] The City of Fayetteville, Laurel Hill Electric Company and Pinehurst, Inc., have subsequently informed this Commission that they request the lower interim rate and agree to its conditions, *supra*, at 3. Although Carolina failed to request a waiver under Section 35.1(e) of the Commission's regulations, the interim rate could only be implemented after a showing of good cause that Carolina should be allowed to collect under a rate different from that required to be on file.

The possibility of a retroactive surcharge (offset against any Carolina refund obligation) was expressly anticipated by the customer signatories and is a component of a partial settlement of this proceeding which immediately reduces their wholesale rates. The Stipulation also provides that any retroactive increase may not cause total Carolina revenues to exceed those collectible under proposed schedule RS-12. Moreover, the consent of the non-signatory customers to the interim rate removes any possibility that they might be unduly burdened by any later surcharge or that they might be discriminated against if schedule RS-12A were applied only to the signatory customers.[6] On the basis of each of those findings, we conclude that waivers under Sections 35.1(e) and 35.11 of our Regulations are warranted to permit the lower interim rate of schedule RS-12A to become effective as of April 1, 1979.

The Commission orders: (A) Good cause having been shown, the notice requirements of Section 35.3 of the Commission's Regulations are hereby waived.

(B) Good cause having been shown, interim schedule RS-12A is allowed to become effective as of April 1, 1979, under Sections 35.1(e) and 35.11 of the Commission's Regulations pursuant to the conditions of the Stipulation of March 16, 1978. The proposed interim rate schedules are hereby designated as shown in Attachment A.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Docket No. ER77-485

Rate schedule designations	Other party
Supplement No. 17 to Rate Schedule FPC No. 68 (Supersedes Supp. No. 15)	Town of Louisberg.
Supplement No. 15 to Rate Schedule FPC No. 84 (Supersedes Supp. No. 13)	City of New Bern.
Supplement No. 16 to Rate Schedule FPC No. 85 (Supersedes Supp. No. 14)	Town of Pikeville.
Supplement No. 16 to Rate Schedule FPC No. 77 (Supersedes Supp. No. 14)	Town of Red Springs.
Supplement No. 14 to Rate Schedule FPC No. 94 (Supersedes Supp. No. 12)	City of Rocky Mount.
Supplement No. 17 to Rate Schedule FPC No. 87 (Supersedes Supp. No. 15)	Town of Smithfield.
Supplement No. 18 to Rate Schedule FPC No. 79 (Supersedes Supp. No. 16)	City of Southport.
Supplement No. 15 to Rate Schedule FPC No. 88 (Supersedes Supp. No. 13)	Town of Wake Forest.
Supplement No. 16 to Rate Schedule FPC No. 89 (Supersedes Supp. No. 14)	Town of Waynesville.
Supplement No. 16 to Rate Schedule FPC No. 90 (Supersedes Supp. No. 13)	City of Wilson.
Supplement No. 16 to Rate Schedule FPC No. 51 (Supersedes Supp. No. 14)	Laurel Hill Electric Company.
Supplement No. 11 to Rate Schedule FPC No. 105 (Supersedes Supp. No. 9)	Pinehurst, Inc.
First Revised Sheet Nos. 5, 6 and 7 to FPC Electric Tariff, First Revised Volume No. 1 (Supersedes Original Sheet Nos. 5, 6 and 7 to FPC Electric Tariff, First Revised Volume No. 1).	Tariff Customers.

[FR Doc. 79-15334 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-118]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Petition To Amend

May 9, 1979.

Take notice that on May 1, 1979, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP77-118 a petition to amend the certificate of public convenience and necessity issued to them, and other participating pipelines, pursuant to Section 7(c) of the Natural Gas Act on March 1, 1977, so as to extend the term of the transportation service authorized therein for General Electric Company (GE) for an additional two years, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.[1]

It is indicated that the purpose of the original application in the subject docket, and those of the other participating pipelines, was to arrange for the transportation of gas for a 10-year period from reserves purchased and placed in Cameron Parish, Louisiana, by GE. Petitioners indicate further that on March 1, 1977, the Commission issued certificates authorizing the transportation service for a two-year term from initial delivery

[4] Rehearing granted in part, Opinion No. 19-A (February 21, 1979), *appeal pending*, *ElectriCities of North Carolina, et al.* v. *FERC*, D. C. Cir. No. 79-1205.

[5] *Wisconsin Electric Power Co.*, Docket No. ER78-512, order issued February 2, 1979; *Public Service Company of Oklahoma*, Docket No. ER78-511, order issued December 27, 1978; and *Illinois Power Co.*, Docket No. ER77-531, order issued July 25, 1978.

[6] The Commission advises, in the future when interim rates are submitted, the Commission's consideration would be assisted if the filing party would include a statement indicating the positions of each customer in the affected class. We do not mean to imply that the interim rate must have unanimous customer approval before it may be accepted for application to any member of the class; however, the Commission should be apprised that all customers have been offered the rate, and informed of any conditions which limit its availability. Whether an interim rate may be applied to less than all customers in a class is an issue for case-by-case determination. *Cf. Boston Edison Co.*, Docket Nos. E-8855, *et al.* order issued January 30, 1979.

[1] This proceeding was commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Federal Energy Regulatory Commission (FERC). The term "Commission" when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

only, without prejudice to the filing for certificate authorization to continue the service beyond the two-year term on the condition that said filings be made at least six months prior to the expiration of the two-year term. Upon applications for rehearing, rehearing was granted and formal hearings were held in this proceeding.

It is stated that the initial decision of the Presiding Judge was issued March 1, 1977, in Docket No. CP77-71, *et al.*, approving the transportation service by the participating pipelines for GE for a ten-year period subject to several conditions. Petitioners state that they and other participants have filed exceptions to the initial decision and, therefore, in order to provide continuous delivery of gas to GE request the additional two-year extension without prejudice to the outcome of the pending proceedings.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a part in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kennth F. Plumb,

Secretary.

[FR Doc. 79-15335 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-465]

Columbia Gas Transmission Corp. and National Fuel Gas Supply Corp., Petition To Amend

May 9, 1979.

Take notice that on April 25, 1979, Columbia Gas Transmission Corporation, (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, and National Fuel Gas Supply Corporation (Supply Corporation), 308 Seneca Street, Oil City, Pennsylvania 16301 (Petitioners), filed in Docket No. CP77-465 a petition to amend the order of September 9, 1977,[1] as amended July 18, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize Petitioner to exchange gas for an extended period of time and to authorize Columbia Gas to transport such gas exchanged for the extended period, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is stated that pursuant to the order of September 9, 1977, as amended July 18, 1978, Petitioners were authorized, among other things, to exchange and transport gas for a period ending March 31, 1979, and to increase the volumes so transported for UGI Corporation (UGI) to 2,431,000 Mcf per day.

Petitioners request herein an extension from April 1, 1979, through March 31, 1980, of the authorization previously granted to exchange natural gas and for Columbia Gas to transport the gas so exchanged for delivery to UGI for the extended period. The maximum volume to be transported hereunder by Columbia Gas for UGI is 2,981,000 Mcf, it is stated.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15336 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket Nos. CI79-415; CI79-355]

Continental Oil Co.; Petition for Declaratory Order or in the Alternative a Certificate of Public Convenience and Necessity

May 10, 1979.

Take notice that on April 4, 1979, Continental Oil Company, P.O. Box 2197, Houston, Texas 77001 (Petitioner), filed a petition for a declaratory order in Docket No. CI79-415. Petitioner states that it entered into a contract on March 14, 1979 with Tennessee Gas Pipeline Company (Tennessee) for the sale of natural gas from the East Cameron Block 97, Offshore Louisiana (OCS G-3294). Petitioner requests that the Commission declare that certificates of Public Convenience and Necessity are not required for producer sales from old offshore federal leases where no sale of natural gas in interstate commerce for resale had commenced and no certificate with respect to any such proposed sale had been issued prior to December 1, 1978, the effective date of the Natural Gas Policy Act of 1978 (NGPA). More specifically petitioner asserts that such gas is not committed or dedicated to interstate commerce and is therfore excluded from this Commission's certificate authority under the Natural Gas Act (NGA) by reason of section 601(a)(1)(A) of the NGPA.

Take further notice that petitiner also filed an application on April 4, 1979 in Docket No. CI79-355, for a Certificate of Public Convenience and Necessity covering the above mentioned gas. Petitioner states that its application for a certificate is filed under protest at the request of Tennessee and that it is subject to its petition for a declaratory order that no certificate is required or permitted for this sale.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 18, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15337 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CP70-196 and CP74-227]

Distrigas Corp. et al.; Further Extension of Time

May 8, 1979.

In the matter of Distrigas Corporation [Docket Nos. CP70-196 and CP74-227], Distrigas Corporation of Massachusetts [Docket Nos. CP73-135 and CP74-137].

On April 11, 1979, Distrigas Corporation filed a motion for stay of Ordering Paragraph (E) of the Commission's order of January 2, 1979, pending judicial review. The motion also asked for an extension of time for compliance with that paragraph pending Commission action on the request for a stay. By notice issued April 19, 1979, a further extension of time for complying with the refund requirement of Ordering Paragraph (E) was granted to and including May 14, 1979. The report of refunds and interest was to be filed on or before May 29, 1979.

Notice is hereby given that a further extension of time for complying with the refund requirement of Ordering Paragraph (E) is granted to and including June 1, 1979; the report of refunds and interest shall be filed on or before June 12, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15338 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES79-39]

Gulf States Utilities Co.; Application

May 10, 1979

Take notice that on May 2, 1979, Gulf States Utilities Company (Applicant) filed an application seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of 700,000 additional shares of Common Stock. Applicant is incorporated under the laws of Texas with its principal business office at Beaumont, Texas, and in engaged in the electric utility business in portions of Louisiana and Texas. Natural gas is purchased at wholesale and distributed at retail in the City of Baton Rouge, Louisiana and vicinity. The Applicant proposes to sell the Additional Common Stock from time to time pursuant to the provisions of an Employees Thrift Plan in accordance with the Commission's Regulations under the Federal Power Act.

From time to time as sales of the new securities occur, the proceeds will be added to the general funds of the Company to be used to refund a portion of its short-term notes previously authorized by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should, on or before May 30, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15339 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP79-67]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

May 10, 1979

Take notice that on April 30, 1979, Louisiana-Nevada Transit Company (LNT) tendered for filing proposed changes in its FERC Gas Tariff, 12th Revised Sheet No. PGA-1.

LNT states that the change in rate filed herein is to comply with Section 154.38(d)(vi)(a) of the Commission's Regulations and to establish a new Base Tariff Rate under LNT's purchase gas adjustment clause. LNT states that the new Base Tariff Rate amounts to 64.44¢/Mcf with a Base Cost of Gas of 40.27¢/Mcf.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15340 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-280]

Michigan Wisconsin Pipe Line Co.; Application

May 9, 1979.

Take notice that on April 19, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-280 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for El Paso Natural Gas Company (El Paso), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that El Paso has acquired a leasehold right covering 15 percent of the natural gas reserves underlying High Island Area Block A-309, offshore Texas (The Block A-309 gas), and that El Paso has, subject to the Commission approval, acquired an ownership interest in the lateral pipeline facilities connecting the Block A-309 production platform with the transmission facilities of High Island Offshore System (HIOS) in High Island Area Block 332. It is further indicated that El Paso has made arrangment with HIOS to transport the Block A-309 gas from Block 332 to West Cameron Area Block 167, offshore Louisiana. Applicant states that pursuant to a transportation agreement dated December 20, 1978, with El Paso it has agreed to transport the Block A-309 gas from Block 167 and redeliver equivalent volumes for El Paso's account, at Applicant's Grand Chenier metering station, Cameron Parish, Louisiana. The Block A-309 gas delivered for El Paso's account at the redelivery point would be exchanged for equivalent volumes which Applicant would cause Northwest Pipeline Corporation to deliver to El Paso for Applicant's account at Ignacio, Colorado.

It is stated that as consideration for providing the transportation service, El Paso would pay Applicant a monthly transportation charge equal to the contract demand multiplied by a demand charge of $1.03 per mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before, May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15341 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP75-80]

Northwest Pipeline Corp.; Petition To Amend

May 9, 1979.

Take notice that on April 19, 1979, Northwest Pipeline Corporation, (Petitioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP75-80 a petition to amend the order issued November 18, 1974, [1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an additional point of interconnection between El Paso Natural Gas Company (El Paso) and Petitioner, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of November 18, 1974, Petitioner was authorized among other things, to construct and operate certain points of interconnection for the delivery of balancing gas by El Paso to Northwest.

Petitioner proposes to operate an additional point of interconnenction to serve as an additional exchange point for the delivery of balancing gas by Petitioner to El Paso pursuant to the San Juan Gathering Agreement dated January 31, 1974, between the two companies. The proposed point of interconnenction would be at the intersection of El Paso's Lateral "2C-21" and Petitioner's lateral "11-H4" in Arriba County, New Mexico, it is stated. Petitioner states that this point of interconnection would require the installation of two line taps, a four-inch meter run and appurtenant facilities. Petitioner proposes to construct the measuring facilities and the tap on its gathering facilities under the gathering system exemption of Section 1(b) of the Natural Gas Act. The estimated cost of such facilities is $5,000, which cost would finance from funds on hand, it is said.

Petitioner states that the proposed additional delivery point for balancing gas is required because petitioner must lower the pressure in a portion of its Don Guan Gathering System to satisy the contractual obligation that exists under a gas purchase contract between petitioner and Amoco Production Company.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15342 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES 79-40]

Pacific Power & Light Co.; Application

May 10, 1979.

Take notice that on May 4, 1979, Pacific Power & Light Company (Applicant), a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authority to issue not to exceed $200,000,000 in an aggregate principal amount at any one time outstanding of (1) unsecured promissory notes (Notes) pursuant to Lines of Credit with commercial banks ($100,000,000), and (2) Commercial Paper ($100,000,000).

Proceeds from the sale of the Notes and Commercial Paper will be used to finance current transactions, including the interim financing of a portion of Applicant's construction program and the refunding of other short-term borrowings made to finance current transactions.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15343 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-273]

Panhandle Eastern Pipe Line Co.; Application

May 9, 1979.

Take notice that on April 17, 1979, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP79-273 an application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation for two years of up to 300 Mcf of natural gas per day for Fruehauf Corporation (Fruehauf), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation contract dated September 29, 1978, between Applicant and Fruehauf, Applicant proposes to receive from Columbia Gas Transmission Corporation (Columbia Gas) [1] at the existing point of interconnection of the facilities of Applicant and Columbia Gas near Maumee, in Lucas County, Ohio, up to 300 Mcf of natural gas per day, and to transport and deliver equivalent volumes of gas for Fruehauf's account to Northern Natural Gas Company (Northern) [2] at the existing point of interconnection between Applicant and Northern near Greensburg, Kiowa County, Kansas.

It is indicated that Fruehauf would use this gas in direct gas fired drying ovens, make-up air and related operations wherein a clean burning fuel is required and necessary. It is further indicated that technology at this time does not permit the burning of alternate fuels.

Applicant states that it would charge Fruehauf for the proposed transportation service $237 per month, and that an upward or downward adjustment of 2.59 cents per Mcf would be applied to certain deficiencies or excess volumes taken.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15344 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Columbia Gas filed for authorization to transport this gas for Fruehauf in Docket No. CP79-135.

[2] Northern filed for authorization to transport this gas for Fruehauf in Docket No. CP79-110.

[Docket No. CP76-322]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., and East Tennessee Natural Gas Co.; Joint Petition To Amend

May 9, 1979.

Take notice that on April 23, 1979, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001 and East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP76-322 a joint petition to amend the order of January 17, 1979, issued in said docket pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize Petitioners to transport certain imbalance volumes for Stauffer Chemical Company (Stauffer), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.[1]

It is stated that pursuant to the Commission's order issued on June 30, 1976, in Docket No. CP76-322, and pursuant to the amendments thereto issued on June 15, 1977 and temporary certificate issued on March 24, 1978, Tennessee and East Tennessee transported volumes of natural gas for the account of Stauffer, Consolidated Aluminum Corporation (Conalco), and Hooker Chemical Corporation (Hooker). The aforementioned amendment and temporary certificate related only to transportation for Stauffer, it is asserted. Petitioners state that the June 30, 1976 order authorized them to transport gas for Stauffer, Conalco, and Hooker from the Beckwith Creek Field, Calcasieu Parish, Louisiana. It is stated that the temporary certificate issued on March 29, 1978, authorized Petitioners to transport gas for the account of Stauffer from an additional source of supply located in the Waveland Field in Hancock County, Mississippi. Petitioners state that on January 17, 1979, the Commission granted extended authorization in the above referenced docket to transport gas from the Waveland Field for the account of Stauffer until August 15, 1980.

Petitioners state that subsequent to the filing of the request for an extension, Tennessee discovered that an imbalance existed between certain volumes of natural gas delivered to its pipeline system by Texas Pacific Oil Company (Texas Pacific) from the Beckwith Creek Field and Texas Pacific Oil Company (UK), Inc. (Texas Oil) from the Waveland Field, and the volumes delivered to East Tennessee for delivery to Stauffer, Conalco, and Hooker, the authorization for which had terminated on August 15, 1978. Petitioners further state that Texas Pacific and Texas Oil have not been paid for such imbalances. It is asserted that the imbalances occurred as a result of Texas Pacific and Texas Oil continuing to deliver gas into Tennessee's system after the August 15, 1978 termination date.

Petitioners state that the circumstances relating to the imbalance have been reviewed by all parties concerned and that Conalco and Hooker do not need their respective volumes of the imbalance. However, states

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Petitioners, Stauffer would utilize the total amount of the imbalance volumes pursuant to the provisions of the order issued herein on January 17, 1979, and would purchase such imbalance volumes under the terms of its gas purchase contract with Texas Pacific. Petitioners state that they would transport such imbalance volumes for Stauffer pursuant to the provisions of its transportation contracts approved by the aforementioned January 17, 1979 order. It is stated that such volumes would be purchased and transported within the volumetric limits of such contracts without further amendment. It is further stated that the total imbalance is 29,773 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15345 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-3618
API Well Number: 3411921980**14
Section: 108
Operator: The Oxford Oil Co.
Well Name: L. J. Baird Community #1
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Trans. Corp.
Volume: 2/4 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15346 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On April 18, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD 79-5648
API Well Number: 34 133 2 1525 ** 14
Section: 103
Operator: Inland Drilling Co., Inc
Well Name: Martin-Mantua #2
Field: N/A
County: Portage
Purchaser: East Ohio Gas
Volume: 2.308 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15347 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 4, 1979.

On April 25, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of West Virginia, Department of Mines, Oil and Gas Division

FERC Control Number: JD79-3906
API Well Number: 47-039-3210-Rev.
Section of NGPA: 103
Operator: Allegheny & Western Energy Corp.
Well Name: Eastern Associated Coal No. 5-Rev.
Field: Cabin Creek
County: Kanawha
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79-3907
API Well Number: 47-039-3204
Section of NGPA: 103
Operator: Allegheny & Western Energy Corp.
Well Name: Eastern Associated Coal No. 9
Field: Cabin Creek
County: Kanawha
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79-3908
API Well Number: 47-039-3203
Section of NGPA: 103
Operator: Allegheny & Western Energy Corp.
Well Name: Eastern Associated Coal #8
Field: Cabin Creek
County: Kanawha
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79-3909
API Well Number: 47-039-3201
Section of NGPA: 103
Operator: Allegheny & Western Energy Corp.
Well Name: Eastern Associated Coal No. 4
Field: Cabin Creek
County: Kanawha
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79-3910
API Well Number: 47-039-2846
Section of NGPA: 103
Operator: Allegheny & Western Energy Corp.
Well Name: Eastern Associated Coal No. 1
Field: Cabin Creek
County: Kanawha
Purchaser: Columbia Gas Transmission Corp.
Volume: 95 MMcf.

FERC Control Number: JD79-3911
API Well Number: 47-021-2979
Section of NGPA: 103
Operator: Braxton Oil and Gas Corp.
Well Name: Stout No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 30 MMcf.

FERC Control Number: JD79-3912
API Well Number: 47-021-2846
Section of NGPA: 103

Operator: Braxton Oil and Gas Corp.
Well Name: Pickens No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 16 MMcf.

FERC Control Number: JD79-3913
API Well Number: 47-021-2836
Section of NGPA: 103
Operator: Braxton Oil and Gas Corp.
Well Name: Woodford No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 27 MMcf.

FERC Control Number: JD79-3914
API Well Number: 47-007-1370
Section of NGPA: 103
Operator: Braxton Oil and Gas Corp.
Well Name: John Posey No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 50 MMcf.

FERC Control Number: JD79-3915
API Well Number: 47-007-1202
Section of NGPA: 103
Operator: Braxton Oil and Gas Corp.
Well Name: Toothman No. 1
Field: Aspinall-Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 12 MMcf.

FERC Control Number: JD79-3916
API Well Number: 47-007-1223
Section of NGPA: 103
Operator: Braxton Oil and Gas Corp.
Well Name: Toms No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 14 MMcf.

FERC Control Number: JD79-3917
API Well Number: 47-041-2544
Section of NGPA: 103
Operator: Braxton Oil and Gas Corp.
Well Name: Rollyson No. 1
Field: Vandalia
County: Lewis
Purchaser:
Volume: 50 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15348 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On April 12, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

U.S. Department of the Interior, Geological Survey

FERC Control Number: JD79-5650
API Well Number: 30-045-22747
Section: 103
Operator: El Paso Natural Gas Company
Well Name: Jones A #1-A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 291 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15349 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. ER79-242, ER79-245, ER79-247, ER79-250, ER79-254, and ER79-269]

American Electric Power Service Corp., et al.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Waiving Notice Requirements, and Consolidating Proceedings

Issued May 7, 1979.

In the matter of American Electric Power Service Corporation, *et al.*, [Docket Nos. ER79-242, ER79-245, ER79-247, ER79-250, ER79-254, and ER79-269], Indiana and Michigan Electric Company, [Docket No. ER78-229], Ohio Power Company and Indiana and Michigan Electric Company, [Docket Nos. ER78-292 and ER78-313].

American Electric Power Service Corporation (AEP), on behalf of several of its affiliates, has filed a series of proposed amendments to existing interconnection and operating agreements between individual AEP affiliates and other electric utilities.[1]

Certificates of concurrence from the other participating utilities and supporting cost data were submitted with each filing. In Docket No. ER79-250, Consumers Power Company and the Detroit Edison Company each filed separate certificates of concurrence in the proposed amendment and cost data supporting the proposed rates.

Notices of the proposed amendments were issued between March 20 and March 30, 1979. The West Virginia Public Service Commission filed a notice of intervention in Docket No. ER79-269, and the City of Richmond, Indiana, filed a petition to intervene in Docket No. ER79-247. Neither request for intervention raised any issues, nor did either request hearings. No other petitions to intervene or protests have been filed in connection with any of these dockets.

The proposed amendments in each of the dockets provide for transfers of "Conservation Energy" during an energy emergency. Each proposed amendment also covers payments to utilities whose systems lie between the purchasers and sellers of conservation energy. AEP states that the terms and conditions of the service covered by each of the filings are similar to those at issue in Docket Nos. ER78-229 and ER78-292. AEP also

[1] The proposed amendments have been assigned the following docket numbers: ER79-242 concerns a proposed amendment, filed March 8, 1979, to an interconnection agreement, dated June 14, 1962, between Ohio Power Co. and Cleveland Electric Illuminating Co.; ER79-245 relates to a proposed amendment, filed March 12, 1979; to an interconnection agreement, dated December 1, 1963, between Ohio Power Co. and Columbus and Southern Ohio Electric Co.; ER79-247 concerns a proposed amendment, filed March 14, 1979, to an interconnection agreement, dated January 2, 1977, between Indiana and Michigan Electric Co. and the City of Richmond, Indiana; ER79-250 concerns proposed amendment, filed March 14, 1979, to an operating agreement, dated March 1, 1968, among Indiana and Michigan Electric Co., Consumers Power Co. and the Detroit Edison Co.; ER79-254 relates to a proposed amendment, filed March 16, 1979, to an interconnection agreement, dated December 30, 1960, between Indiana and Michigan Electric Co. and Indianapolis Power and Light Co.; and ER79-269 concerns a proposed amendment, filed March 27, 1979, to an interconnection agreement, dated October 14, 1968, between Appalachian Power Co. and the Tennessee Valley Authority. See Attachment A for designations of appropriate rate schedules.

states that transactions under the proposed amendments may occur immediately because of the present oil supply situation and requests waiver of the notice requirements of Sections 35.3 and 35.11 of the Commission's Regulations to permit each proposed amendment to become effective as of the date it was filed.

All transactions are discretionary and scheduled for periods of one or more weeks. The proposed amendments to the particular agreements provide that the parties to a given transaction must mutually agree to the quantities and estimated cost of electric energy to be supplied and the duration of the transaction. Under each of the proposed amendments the rates for Conservation Energy consist of 110% of the out-of-pocket replacement cost of energy plus 5.00 mills per kilowatt-hour. "Replacement cost of generating the energy" is defined as the "out-of-pocket cost of generating [the energy] plus or minus an adjustment (to be made by supplemental bill) to reflect increases or decreases in the cost of fuel on a Btu basis between the cost of fuel at the stations from which [the energy] was delivered during the month [the energy] was delivered and the cost of such fuel for the second month after such month of delivery." The proposed amendments also specify that in the event one party to an agreement purchases Conservation Energy from a third party for delivery to another party, the delivering party shall receive its out-of-pocket costs for purchased Conservation Energy and transmission losses, plus a specified amount per kilowatt-hour.

AEP asserts that it is not possible to estimate transactions and revenues under the proposed amendments because of the uncertainty of events that might determine the need for Conservation Energy and requests that the Commission waive Section 35.12(b) of its Regulations. The Commission notes that these filings are in the nature of changes in filed rate schedules rather than initially-filed rate schedules; therefore, Section 35.12(b) is inapposite. However, the Commission will waive the requirement of Section 35.13(b)(1) for a comparative statement estimating transactions and revenues under each of the proposed amendments.

A review of AEP's submittals indicates that the filings have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, the proposed amendments will be accepted for filing and suspended as hereinafter ordered.

Common issues of law and fact exist between the proposed agreements described above and similar proposed agreements involved in Docket No. ER 78-229 and Docket Nos. ER78-292 and ER78-313.[2] In the interests of efficiency these dockets will therefore be consolidated.

The Commission orders.—(A) The requirements for notice contained in Sections 35.3 and 35.11 of the Commission's Rules and Regulations are hereby waived.

(B) The filing requirement of Section 35.13(b)(1) for a comparative statement of transactions and revenues under each of the proposed amendments is hereby waived.

(C) The proposed amendments filed by AEP, Detroit Edison Company and Consumers Power Company, identified above, are hereby accepted for filing and suspended for one day, to become effective, subject to refund, as of the dates prescribed in the following schedule:

(1) Docket No. ER79-242, March 9, 1979;

(2) Docket No. ER79-245, March 13, 1979;

(3) Docket No. ER79-247, March 15, 1979;

(4) Docket No. ER79-250, March 16, 1979;

(5) Docket No. ER79-254, March 17, 1979;

(6) Docket No. ER79-269, March 28, 1979;

(D) Docket Nos. ER79-242, ER79-245, ER79-247, ER79-250, ER79-254 and ER79-269 are hereby consolidated with Docket Nos. ER78-229 and with Docket Nos. ER78-292 and ER78-313.

(E) The West Virginia Public Service Commission and the City of Richmond, Indiana, are hereby permitted to intervene in these proceedings subject to the Rules and Regulations of the Commission: *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in these proceedings.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the amendments proposed by AEP. Procedural dates will be established by subsequent order.

(G) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[2] Docket Nos. ER78-292 and ER78-313 were previously consolidated by order of May 26, 1978.

Fuel Conservation Energy—Designations

Docket No. ER79-242

Filed: March 8, 1979. Effective: March 9, 1979, subject to refund.

(1) *Ohio Power Company,* Supp. No. 8 to Rate Schedule FERC No. 31.

(2) *Cleveland Electric Illuminating Co.,* Supp. No. 8 to Rate Schedule FERC No. 1 (Concurs in (1) above).

Docket No. ER79-245

Filed: March 12, 1979. Effective: March 13, 1979, subject to refund.

(1) *Ohio Power Company,* Supp. No. 10 to Rate Schedule FERC No. 32 (Supersedes Supp. No. 6 to R. S. FERC No. 32).

(2) *Columbus & Southern Ohio Electric Co.,* Supp. No. 10 to Rate Schedule FERC No. 7 (Supersedes Supp. No. 6 to R. S. FERC No. 7) (Concurs in (1) above).

Docket No. ER79-247

Filed: March 14, 1979. Effective: March 15, 1979, subject to refund.

(1) *Indiana & Michigan Electric Co.,* Supp. No. 6 to Rate Schedule FERC No. 70.

Docket No. ER79-250

Filed: March 15, 1979. Effective: March 16, 1979, subject to refund.

(1) *Indiana & Michigan Electric Co.,* Supp. No. 13 to Rate Schedule FERC No. 68 (Supersedes Supp. No. 4 to R. S. FERC No. 68).

(2) *Consumers Power Co.,* Supp. No. 16 to Rate Schedule FERC No. 23 (Supersedes Supp. No. 8 to R. S. FERC No. 23) (Concurs in (1) above).

(3) The Detroit Edison Co., Supp. No. 16 to Rate Schedule FERC No. 12 (Supersedes Supp. No. 8 to R. S. FERC No. 12) (Concurs in (1) above).

Docket No. ER79-254

Filed: March 16, 1979. Effective: March 17, 1979, subject to refund.

(1) *Indiana & Michigan Electric Co.,* Supp. No. 14 to Rate Schedule FERC No. 21.

(2) *Indianapolis Power & Light Co.*, Supp. No. 12 to Rate Schedule FERC No. 1 (Concurs in (1) above).

Docket No. ER79-269

Filed: March 27, 1979. Effective: March 28, 1979, subject to refund.

(1) *Appalachian Power Co.*, Supp. No. 5 to Rate Schedule FERC No. 52.

[FR Doc. 79-15350 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-76]

Midwestern Gas Transmission Co.; Amendment

May 9, 1979.

Take notice that on April 27, 1979, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-76 an amendment to its pending application in said docket pursuant to Section 3 of the Natural Gas Act for authorization to import an additional 8,000 Mcf of natural gas per day from Canada into the United States near Emerson, Manitoba, to be purchased from TransCanada Pipelines Limited (TransCanada), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

The application in this docket requests authorization pursuant to Section 7(c) of the Natural Gas Act to sell the additional 8,000 Mcf per day to be imported from Canada on a *pro rata* basis to Midwestern's customers on its northern division. Midwestern stated that TransCanada, which is the sole supplier of gas on Midwestern's northern division, has advised Midwestern that as a result of the expanding development of the petrochemical industry in the Province of Alberta, certain additional natural gas liquids are being removed from its gas stream causing the total heating value of its gas stream to drop below 1,000 Btu's per cubic foot. The proposed sale is to offset this expected drop in Btu levels.

It is indicated that an amending agreement between Midwestern and TransCanada amends an existing contract by increasing the contract quantity from 116,332 Mcf per day to 124,332 Mcf per day and amends all three existing contracts to provide for a minimum Btu content of 950 Btu's per cubic foot instead of 1,000 Btu's per cubic foot. Midwestern will pay $2.30 (U.S.) per Mcf for the additional quantities to be purchased from TransCanada.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before, May 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15351 Filed 5-15-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-354]

Vermont Electric Power Co. Inc.; Rate Schedule Filing

May 10, 1979.

The filing Company submits the following:

Take notice that on May 7, 1979, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a Rate Schedule containing a Bulk Power Purchase Agreement between VELCO and certain Massachusetts Municipal Wholesale Electric Company municipals, including Braintree Electric Light Department of Braintree, Town of Danvers Electric Dept. of Danvers, Hingham Municipal Lighting Plant of Hingham, Holden Municipal Light Dept. of Holden, City of Holyoke, Massachusetts Gas & Electric Dept. of Holyoke, Hudson Light and Power Dept. of Hudson, Hull Municipal Light Dept. of Hull, Ipswich Municipal Light Department of Ipswich, Littleton Electric Light Dept. of Littleton, Mansfield Municipal Light Department of Minsfield, Middleborough Gas & Electric Department of Middeborough, Middleton Municipal Light Department of Middleton, North Attleboro Municipal Electric Light Dept. of North Attleboro, Peabody Municipal Light Plant of Peabody, Templeton Municipal Light Dept. of Baldwinville, West Boylston Municipal Light Dept. of West Boylston and Westfield Gas & Electric Dept. of Westfield, Massachusetts, dated as of February 9, 1979.

VELCO states that the service to be rendered under this Rate Schedule is a follows: 9,000 kw during the period March 1, 1979 to March 31, 1979; 30,000 kw during the period April 1, 1979 to October 31, 1979; 9,000 kw during the period march 1, 1980 to March 31, 1980; 35,000 kw during the period April 1, 1980 to October 31, 1980 and 33,000 kw during the period of May 1, 1981 to October 31, 1981, capacity and related energy from the Vermont Yankee Nuclear Electric Generating Station, at $87,480, $291,600, $87,480, $340,200 and $320,760 per month. Service from VELCO to MMWEC municipals under the Rate Schedule will consist of apporoximately 4,599,000, 15,330,000, 4,599,000, 17,885,000 and 16,863,000 kilowatt-hours/month. Charges for this power will be at VELCO's cost. Therefore, VELCO states that there will be no change in the overall rate of return of VELCO.

VELCO states that service under this Rate Schedule commenced on March 1, 1979 and will terminate on October 31, 1981. An effective date of March 1, 1979, and waiver of the requirements of Section 31.11 of the Commission's Regulations are requested.

Copies of the filing were served upon Massachusetts Municipal Wholesale Electric Company and all of the above named MMWEC municipals and Vermont Public Service Board.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 1, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15357 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-3410
API Well Number: 1711320674
Section of NGPA: 102
Operator: Pel-Tex Oil Company, Inc.
Well Name: S. L. 2476 A #1
Field: Intercoastal City
County: Vermilion
Purchaser: Transcontinental Gas Pipe Line Corporation
Volume: 1,000.

FERC Control Number: JD79-3411
API Well Number: 1706700480
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: J. B. Miles #F-7
Field: Monroe Gas
County: Morehouse
Purchaser: Mid Louisiana Gas company
Volume: 11.2 MMcf.

FERC Control Number: JD79-3412
API Well Number: 1706700504
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Miles C #6
Field: Monroe Gas
County: Morehouse
Purchaser: Mid Louisiana Gas company
Volume: 3.7 MMcf.

FERC Control Number: JD79-3413
API Well Number: 1706700503
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Miles C #5
Field: Monroe Gas
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 3.1 MMcf.

FERC Control Number: JD79-3414
API Well Number: 1706700483
Section of NGPA: 103
Operator: IMC Exploration Company
Well Name: Miles C #4
Field: Monroe Gas
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 2.3 MMcf.

FERC Control Number: JD79-3415
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Miles C #3
Field: Monroe Gas
County: Morehouse
Purchaser: Mid Louisiana Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79-3416
API Well Number: 1701100005
Section of NGPA: 108
Operator: IMC Exploration company
Well Name: Matthews B #74
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas company
Volume: 5.0 MMcf.

FERC Control Number: JD79-3417
API Well Number: 1711100476
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: McKinnie-Wilson B #2
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 2.9 MMcf.

FERC Control Number: JD79-3418
API Well Number: 1711320715
Section of NGPA: 103
Operator: Union Oil Company of California
Well Name: La Furs Inc. "A" #19
Field: East White Lake
County: Vermilion
Purchaser: Transcontinental Gas Pipe Line Corporation
Volume: 328.5 MMcf.

FERC Control Number: JD79-3419
API Well Number: 17-073-21087
Section of NGPA: 108
Operator: Lobo Oil & Gas Corporation
Well Name: Phillips #10
Field: Monroe Gas
County: Ouachita
Purchaser: United Gas Pipe Line Company
Volume: 0.2 MMcf.

FERC Control Number: JD79-3420
API Well Number: 1703320036
Section of NGPA: 107
Operator: South Louisiana Production Co., Inc.
Well Name: 17600' TUSC, RA, SUA: Kizer No. 1
Field: Irene
County: East Baton Rouge
Purchaser: Mid Louisiana Gas Company
Volume: 3,650 MMcf.

FERC Control Number: JD79-3421
API Well Number: 1709920704
Section of NGPA: 103
Operator: Shell Oil Co.
Well Name: A RB SUA H Burdin No. 21
Field: West Lake Verret
County: St. Martin
Purchaser: United Gas Pipe Line Co.
Volume:

FERC Control Number: JD79-3422
API Well Number: 1711320714
Section of NGPA: 102
Operator: Pel-Tex Oil Company, Inc.
Well Name: W. J. Kuehling Heirs #1
Field: Intracostal City
County: Vermilion
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 1,000 MMcf.

FERC Control Number: JD79-3423
API Well Number: 1705721502
Section of NGPA: 102
Operator: McMoRan Exploration Co.
Well Name: Sabine Royalty No. 1 158726
Field: Lake Beouf
County: Lafourche
Purchaser: Transcontinental Gas Pipe Line Corp.
Volume: 180 MMcf.

FERC Control Number: JD79-3424
API Well Number: 1710921903
Section of NGPA: 102
Operator: McMoRan
Well Name: Terrebonne Parish School Board No. 1
Field: Lake Hatch
County: Terrebonne
Purchaser: Columbia Gas Transmission
Volume: 264 MMcf.

FERC Control Number: JD79-3425
API Well Number: 17-067-20600
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-5
Field: Monroe Gas
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 17.6 MMcf.

FERC Control Number: JD79-3426
API Well Number: 17-067-20531
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-4
Field: Monroe Gas
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 8.9 MMcf.

FERC Control Number: JD79-3427
API Well Number: 17-717-20103
Section of NGPA: 103(c)
Operator: Chevron U.S.A. Inc.
Well Name: S. L. 1486 #19
Field: Bay Marchand
County: Offshore LaFourche (State)
Purchaser: Tennessee Gas Pipeline Co.
Volume: 10 MMcf.

FERC Control Number: JD79-3428
API Well Number: 17-717-20103-00
Section of NGPA: 103c
Operator: Chevron U.S.A. Inc.
Well Name: S. L. 1486 #19-D
Field: Bay Marchang
County: Offshore La. (State)
Purchaser: Tennessee Gas Pipeline Company
Volume: 20 MMcf.

FERC Control Number: JD79-3429
API Well Number: 17-714-20064
Section of NGPA: 103c
Operator: Chevron U.S.A. Inc.
Well Name: S. L. 1367 #23
Field: Bay Marchand Blk. 2
County: Offshore Lafourche (State)
Purchaser: Tennessee Gas Pipeline Company
Volume: 7.4 MMcf.

FERC Control Number: JD79-3430
API Well Number: 17-714-20057
Section of NGPA: 103(c)
Operator: Chevron U.S.A. Inc.
Well Name: S. L. 2724 #16
Field: Bay Marchand
County: Offshore Lafourche (State)
Purchaser: Tennessee Gas Pipeline Co.
Volume: 36 MMcf.

FERC Control Number: JD79-3431
API Well Number: 1709320150
Section of NGPA: 103
Operator: Shell Oil Co.
Well Name: Schexnayder Community No. 17
Field: La Pice
County: St. James
Purchaser: United Gas Pipe Line Co.
Volume: 60 MMcf.

FERC Control Number: JD79-3432
API Well Number: 1709320181
Section of NGPA: 103
Operator: Forman Exploration Company
Well Name: Lanaux No. 1
Field: Romeville
County: St. James
Purchaser: Transcontinental Gas Pipe Line Corporation
Volume: 550 MMcf.

FERC Control Number: JD79-3433
API Well Number: 1710921977
Section of NGPA: 107
Operator: The Superior Oil Company
Well Name: VUA; LL&E U 12 No. 16
Field: Four Isle Dome
County: Terrebonne
Purchaser: United Gas Pipe Line Company
Volume: 876 MMcf.

FERC Control Number: JD79-3434
API Well Number: 1705320520
Section of NGPA: 102
Operator: Great Southern Oil & Gas Co., Inc.
Well Name: CIB JEFF RA SUA; Miller #4
Field: Lake Arthur
County: Jefferson Davis
Purchaser: Trunkline Gas Company
Volume: 108 MMcf.

FERC Control Number: JD79-3435
API Well Number: 17-067-20140
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: G. T. Madison #2
Field: Monroe
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 1.9 MMcf.

FERC Control Number: JD79-3436
API Well Number: 17-067-20141
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: G. T. Madison #1
Field: Monroe
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 4.2 MMcf.

FERC Control Number: JD79-3437
API Well Number: 17-067-20248
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: HSU 512; Higginbotham #2
Field: Monroe
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 1.5 MMcf.

FERC Control Number: JD79-3438
API Well Number: 17-067-20249
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Higginbotham #3
Field: Monroe
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 4.7 MMcf.

FERC Control Number: JD79-3439
API Well Number: 17-067-20530
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-3
Field: Monroe
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 1.9 MMcf.

FERC Control Number: JD79-3440
API Well Number: 17-067-20483
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-1
Field: Monroe Gas
County: Morehouse
Purchaser: Georgia Pacific Corporation
Volume: 4.1 MMcf.

FERC Control Number: JD79-3441
API Well Number: 1772620148
Section of NGPA: 102
Operator: Kerr-McGee Corporation
Well Name: State Lease 2000 Well No. 45
Field: Breton Sound Block 20
County: Offshore Plaquemines
Purchaser: Southern Natural Gas Co.
Volume: 3,500 MMcf.

FERC Control Number: JD79-3442
API Well Number: 1772620156
Section of NGPA: 102
Operator: Kerr-McGee Corporation
Well Name: State Lease 6802 Well No. 1
Field: Breton Sound Block 20
County: Offshore Plaquemines
Purchaser: Southern Natural Gas Co.
Volume: 1,500 MMcf.

FERC Control Number: JD79-3443
API Well Number: 1772620157
Section of NGPA: 102
Operator: Kerr-McGee Corporation
Well Name: State Lease 1230 Well No. 3
Field: Breton Sound Block 20
County: Offshore Plaquemines
Purchaser: Southern Natural Gas Co.
Volume: 1,250 MMcf.

FERC Control Number: JD79-3444
API Well Number: 1772620145
Section of NGPA: 102
Operator: Kerr-McGee Corporation
Well Name: State Lease 1230 Well No. 1
Field: Breton Sound Block 20
County: Offshore Plaquemines
Purchaser: Southern Natural Gas Co.
Volume: 3,500 MMcf.

FERC Control Number: JD79-3445
API Well Number: 1772620139
Section of NGPA: 102
Operator: Kerr-McGee Corporation
Well Name: State Lease 2000 Well No. 44
Field: Breton Sound Block 20
County: Offshore Plaquemines
Purchaser: Southern Natural Gas Co.
Volume: 3,500 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15352 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to the 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-3446
API Well Number: 17 031 20884
Section of NGPA: 103
Operator: GEORGE R. SCHURMAN
Well Name: NORRIS SUA BAKER #2
Field: SPIDER
County: DESOTO PARISH
Purchaser: LOUISIANA INTRASTATE GAS CORP.
Volume: 360 MMcf.

FERC Control Number: JD79-3447
API Well Number: 17 109 21977
Section of NGPA: 107
Operator: THE SUPERIOR OIL COMPANY
Well Name: VUA; LL&E U12 NO. 16-D
Field: FOUR ISLE DOME
County: TERREBONE PARISH
Purchaser: UNITED GAS PIPE LINE COMPANY.
Volume:

FERC Control Number: JD79-3448
API Well Number: 17 109 21875
Section of NGPA: 107
Operator: THE SUPERIOR OIL COMPANY
Well Name: 15,900 SUA; KELLY ET AL NO. 2
Field: BAYOU RAMBIO
County: TERREBONE PARISH
Purchaser: UNITED GAS PIPE LINE COMPANY
Volume: 3,166 MMcf.

FERC Control Number: JD79-3449
API Well Number: 17 109 20978
Section of NGPA: 103
Operator: UNION OIL COMPANY OF CALIFORNIA
Well Name: LATERRE CO., Inc. "C" WELL NO. 11
Field: LAKE PAIGE
County: TERREBONE PARISH
Purchaser: TEXAS GAS TRANSMISSION CORP.
Volume: 600 MMcf.

FERC Control Number: JD79-3450
API Well Number: 17 725 20190
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: STATE LEASE 1273 WELL NO. 6-D
Field: MAIN PASS BLOCK 47
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 842 MMcf.

FERC Control Number: JD79-3451
API Well Number: 17 726 20135
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION

Well Name: STATE LEASE 4409 WELL NO. 10
Field: BRETON SOUND BLOCK 37
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 994 MMcf.

FERC Control Number: JD79-3452
API Well Number: 17 726 20135
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: STATE LEASE 4409 WELL NO. 10-D
Field: BRETON SOUND BLOCK 37
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 724 MMcf.

FERC Control Number: JD79-3453
API Well Number: 17 726 20147
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: STATE LEASE 4409 WELL NO. 11
Field: BRETON SOUND BLOCK 37
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 307 MMcf.

FERC Control Number: JD79-3454
API Well Number: 17 726 20159
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: S. L. 1997 #11
Field: BRETON SOUND BLOCK 20
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 326 MMcf.

FERC Control Number: JD79-3455
API Well Number: 17 726 20146
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: STATE LEASE 1999 WELL NO. 33
Field: BRETON SOUND BLOCK 20
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 275 MMcf.

FERC Control Number: JD79-3456
API Well Number: 17 726 20154
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: S. L. 2000 #46
Field: BRETON SOUND BLOCK 20
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI7 MMcf.

FERC Control Number: JD79-3457
API Well Number: 17 726 20154
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: S. L. 2000 #46D
Field: BRETON SOUND BLOCK 20 FIELD
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI 123 MMcf.

FERC Control Number: JD79-3458
API Well Number: 17 726 20155
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: S. L. 2000 WELL NO. 47-D
Field: BRETON SOUND BLOCK 20 FIELD
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 54 MMcf.

FERC Control Number: JD79-3459
API Well Number: 17 726 20161
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: S. L. 2000 WELL NO. 48-D
Field: BRETON SOUND BLK 20 FLD
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 41 MMcf.

FERC Control Number: JD79-3460
API Well Number: 17 726 20167
Section of NGPA: 103
Operator: KERR-McGEE CORPORATION
Well Name: S. L. 2000 WELL NO. 49
Field: BRETON SOUND BLOCK 20 FIELD
County: PLAQUEMINES PARISH
Purchaser: SOUTHERN NATURAL GAS COMPANY
Volume: KM WI = 339 MMcf.

FERC Control Number: JD79-3461
API Well Number: 17 109 22067
Section of NGPA: 103
Operator: TENNECO OIL COMPANY
Well Name: TENNECO FEE #5
Field: EAST LAKE DECADE
County: TERREBONE PARISH
Purchaser: LOUISIANA INTRASTATE GAS COMPANY
Volume: 548 MMcf.

FERC Control Number: JD79-3462
API Well Number: 17 113 20767
Section of NGPA: 103
Operator: THE SUPERIOR OIL COMPANY
Well Name: S. L. 3050 NO. 36
Field: LacBLANC
County: VERMILION PARISH
Purchaser: TENNESSEE GAS PIPE LINE CO.
Volume: 755 MMcf.

FERC Control Number: JD79-3464
API Well Number: 17 113 20767
Section of NGPA: 103
Operator: THE SUPERIOR OIL COMPANY
Well Name: S. L. 3050 NO. 36-D
Field: LacBLANC
County: VERMILION PARISH
Purchaser: TENNESSEE GAS PIPE LINE CO.
Volume: 692 MMcf.

FERC Control Number: JD79-3464
API Well Number: 1709720476
Section of NGPA: 103
Operator: C F Braun & Co.
Well Name: Alice Richard No. 1
Field: Lewisburg—Section 4-7S-3E
County: St. Landry Parish
Purchaser: Monterey Pipeline Company
Volume: 300 MMcf.

FERC Control Number: JD79-3465
API Well Number: 1709920636
Section of NGPA: 103
Operator: American Quasar Petroleum Co.
Well Name: Grief Bros. #2
Field: 330 FWL & 2653 FSL 23-9S-8E
County: St. Martin
Purchaser: Southern Natural Gas Co.
Volume: 180 MMcf.

FERC Control Number: JD79-3466
API Well Number: 1711320744
Section of NGPA: 107
Operator: Union Oil Company of California
Well Name: E. B. Meaux No. 1
Field: Wright
County: Vermilion Parish
Purchaser: Columbia Gas Transmission Corp.
Volume: 730 MMcf.

FERC Control Number: JD79-3467
API Well Number: 1711320822
Section of NGPA: 103
Operator: Union Oil Company of California
Well Name: Robert Rrahan et al No. 1
Field: Wright
County: Vermilion Parish
Purchaser: Columbia Gas Transmission Corp.
Volume: 730 MMcf.

FERC Control Number: JD79-3468
API Well Number: 1705320509
Section of NGPA: 102
Operator: Great Southern Oil & Gas Co., Inc.
Well Name: Marg Tex 1 RA Sua; Miller #3
Field: Lake Arthur
County: Jefferson Davis Parish
Purchaser: Trunkline Gas Company
Volume: 840 MMcf.

FERC Control Number: JD79-3469
API Well Number: 1703100366
Section of NGPA: 108
Operator: Phillips Petroleum Company
Well Name: Pet Sus; Lumber No. 1
Field: Logansport
County: De Soto
Purchaser: Southern Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD79-3470
API Well Number: 17-067-20620
Section of NGPA: 108
Operator: Relco Exploration Co., Inc
Well Name: Georgia Pacific M-7
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 7.9 MMcf.

FERC Control Number: JD79-3471
API Well Number: 17-067-20663
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-10
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 5.9 MMcf.

FERC Control Number: JD79-3472
API Well Number: 17-067-20601
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-6
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 5.8 MMcf.

FERC Control Number: JD79-3473
API Well Number: 17-067-20664
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-11
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 12.9 MMcf.

FERC Control Number: JD79-3474
API Well Number: 17-067-20891

Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-18
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 3.9 MMcf.

FERC Control Number: JD79-3475
API Well Number: 17-067-20887
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-14
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 18.3 MMcf.

FERC Control Number: JD79-3476
API Well Number: 17-067-20888
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-15
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 6.6 MMcf.

FERC Control Number: JD79-3477
API Well Number: 17-067-20890
Section of NGPA: 108
Operator: Relco Exploration Co., Inc.
Well Name: Georgia Pacific M-17
Field: Monroe Gas
County: Morehouse Parish
Purchaser: Georgia Pacific Corporation
Volume: 6.0 MMcf.

FERC Control Number: JD79-3478
API Well Number: 1701722748
Section of NGPA: 103
Operator: McGoldrick Oil Company
Well Name: McDade No. 16
Field: Caddo Pine Island
County: Caddo
Purchaser: United Gas Pipeline Company
Volume: 90 MMcf.

FERC Control Number: JD79-3479
API Well Number: 1711920187
Section of NGPA: 103
Operator: Art Machin & Associates, Inc.
Well Name: Pet Ra Su EE; Dr. Vaughan Est. #1
Field: North Shongaloo—Red Rock
County: Webster Parish
Purchaser: United Gas Pipe Line Co.,
Volume: 18 MMcf.

FERC Control Number: JD79-3480
API Well Number: 1709920615
Section of NGPA: 102
Operator: C F Braun & Co.
Well Name: L F Dupuis No. 1
Field: Plumb Bob—Section 23-8S-7E
County: St. Martin Parish
Purchaser:
Volume: 350 MMcf.

FERC Control Number: JD79-3481
API Well Number: 1709720482
Section of NGPA: 103
Operator: C. F. Braun & Co.
Well Name: F A DeJean No. 1
Field: Lewisburg Section 4-7S-3E
County: St. Landry
Purchaser: Monterey Pipeline Company
Volume: 300 MMcf.

FERC Control Number: JD79-3482
API Well Number: 1709720482
Section of NGPA: 103
Operator: C F Braun & Co.
Well Name: F A DeJean 1-D
Field: Lewisburg—Section 4-7S-3E
County: St. Landry Parish
Purchaser: Monterey Pipeline Company
Volume: 300 MMcf.

FERC Control Number: JD79-3483
API Well Number: 17-001-20691
Section of NGPA: 103
Operator: Cotton Petroleum Corporation
Well Name: Michell Leger No. 1
Field: Crowley
County: Acadia Parish
Purchaser: Tennessee Gas Pipeline Company
Volume: 17.7 MMcf.

FERC Control Number: JD79-3484
API Well Number: 17 113 20693
Section of NGPA: 103
Operator: The Superior Oil Company
Well Name: S. L. 3052 NO. 34
Field: Lac Blanc
County: Vermilion Parish
Purchaser: Tennessee Gas Pipe Line Co.
Volume: 1,305 MMcf.

FERC Control Number: JD79-3485
API Well Number: 1711121019
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Graylins #N-144 (Formerly Luffey-Gayling)
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 9.9 MMcf.

FERC Control Number: JD79-3486
API Well Number: 1711121034
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-145
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-3487
API Well Number: 1711121035
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling #N-146
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-3488
API Well Number: 1711121036
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-147
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD79-3489
API Well Number: 1711121037
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-148
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 16.8 MMcf.

FERC Control Number: JD79-3490
API Well Number: 1711121038
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-149
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 16.8 MMcf.

FERC Control Number: JD79-3491
API Well Number: 1711121045
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-150
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 17.9 MMcf.

FERC Control Number: JD79-3492
API Well Number: 1711121046
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-151
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 17.5 MMcf.

FERC Control Number: JD79-3493
API Well Number: 1711121047
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling N-152
Field: Monroe Gas Field
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record in which such determinations were made are available for inspection, except to the extent such material as treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15353 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M]

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-3172
API Well Number: 34-0192-0399**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: M.W.C.D. #1 67035.
Field: N/A.
County: Carroll.
Purchaser: Marsh-Belden.
Volume: 0.874 MMcf.

FERC Control Number: JD79-3173
API Well Number: 14-151-2-1132**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Mary Mong #1 67702-00.
Field: N/A.
County: Stark.
Purchaser: East Ohio Gas Co.
Volume: 1.279.

FERC Control Number: JD79-3174
API Well Number: 34-151-2-1113**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: King #1 67700-00.
Field: N/A.
County: Stark.
Purchaser: East Ohio Gas Co.
Volume: 6.935.

FERC Control Number: JD79-3175
API Well Number: 34-055-2-0038**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Frohring #1 67505-00.
Field: N/A.
County: Geauga.
Purchaser: East Ohio Gas Co.
Volume: 10.22.

FERC Control Number: JD79-3176
API Well Number: 34-055-2-0049**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Franks #1 67503-00.
Field: N/A.
County: Geauga.
Purchaser: East Ohio Gas Co.
Volume: 14.965.

FERC Control Number: JD79-3177
API Well Number: 34-019-2-1000**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: T.&J. Ludwig #1 67237-00.
Field: N/A.
County: Carroll.
Purchaser: Marsh-Beldin.
Volume: 3.650.

FERC Control Number: JD79-3178
API Well Number: 34-167-2-4174**14
Section of NGPA: 102
Operator: A&R Company.
Well Name: Mary E. Hanes No. 1.
Field: N/A.
County: Washington.
Purchaser: Not yet Determined.
Volume: 6 MMcf.

FERC Control Number: JD79-3079
API Well Number: 34-167-2-4133**14
Section of NGPA: 102
Operator: A&R Company.
Well Name: W.B. Petty et al #1.
Field: N/A.
County: Washington.
Purchaser: Not yet Determined.
Volume: 50 MMcf.

FERC Control Number: JD79-3180
API Well Number: 340105-21539**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: M. L. Furbee #1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 15 MMcf.

FERC Control Number: JD79-3181
API Well Number: 3410521521**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: James Carnahan #2.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79-3182
API Well Number: 3410521512**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: James Carnahan #1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79-3183
API Well Number: 3410521550**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: C.R. Harris#2.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 7 MMcf.

FERC Control Number: JD79-3184
API Well Number: 3410521654**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Goeglein Davis #1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79-3185
API Well Number: 3410521687**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Goeglein Bowman #1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 6 MMcf.

FERC Control Number: JD79-3186
API Well Number: 3410521679**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Herdman Lanning #1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79-3187
API Well Number: 3410521667**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Bubby Herdman#1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 1 MMcf.

FERC Control Number: JD79-3188
API Well Number: 3410521523**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Paul Sayre #2.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79-3189
API Well Number: 3410521605**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Rumfield Buck #1.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

FERC Control Number: JD79-3190
API Well Number: 3410521604**14
Section of NGPA: 108
Operator: Adams Drilling Company.
Well Name: Rumfield Buck #2.
Field: N/A.
County: Meigs.
Purchaser: Columbia Gas Transmission Corp.
Volume: 3 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15354 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 30, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

U.S. Department of the Interior, Geological Survey

FERC Control Number: JD79-3314
API Well Number: 35-039-20210

Section of NGPA: 102
Operator: Hoover & Bracken Energies
Well Name: Constalk #1-8
Field: North Weatherford
County: Custer
Purchaser: Michigan Wisconsin Pipe Line Co.
Volume: 730 MMcf.

FERC Control Number: JD79-3315
API Well Number: 30-045-22513
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Lawson 1A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 415 MMcf.

FERC Control Number: JD79-3316
API Well Number: 30-045-22420
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Kernaghan 2A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 312 MMcf.

FERC Control Number: JD79-3317
API Well Number: 30-045-22421
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Kernaghan 3A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 224 MMcf.

FERC Control Number: JD79-3318
API Well Number: 30-045-22422
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Kernaghan 4A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 49 MMcf.

FERC Control Number: JD79-3319
API Well Number: 30-045-22389
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Atlantic A 8A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 405 MMcf.

FERC Control Number: JD79-3320
API Well Number: 30-045-22415
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Hardie 1-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 128 MMcf.

FERC Control Number: JD79-3321
API Well Number: 30-045-22831
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Hughes 7-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 330 MMcf.

FERC Control Number: JD79-3322
API Well Number: 30-045-22832
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Hughes 8-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 440 MMcf.

FERC Control Number: JD79-3323
API Well Number: 30-045-22778
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: El Paso 1-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 123 MMcf.

FERC Control Number: JD79-3324
API Well Number: 30-045-22750
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Grambling 2-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 234 MMcf.

FERC Control Number: JD79-3325
API Well Number: 30-045-22746
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Riddle F 2-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 283 MMcf.

FERC Control Number: JD79-3326
API Well Number: 30-045-22451
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Riddle C 2A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 319 MMcf.

FERC Control Number: JD79-3327
API Well Number: 30-045-22373
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Pritchard 2A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 148 MMcf.

FERC Control Number: JD79-3328
API Well Number: 30-045-22725
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Lucerne A 10
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 190 MMcf.

FERC Control Number: JD79-3329
API Well Number: 30-045-22714
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Day A #5-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 266 MMcf.

FERC Control Number: JD79-3330
API Well Number: 30-045-22715
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Hughes 1-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 67 MMcf.

FERC Control Number: JD79-3331
API Well Number: 30-045-22751
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: San Juan 23-A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 159 MMcf.

FERC Control Number: JD79-3332
API Well Number: 30-045-22463
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Neil #7A (Pictured Cliffs)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 142 MMcf.

FERC Control Number: JD79-3333
API Well Number: 30-045-22463
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Neil #7A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 502 MMcf.

FERC Control Number: JD79-3334
API Well Number: 30-045-22515
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Barnes 3A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 278 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15355 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 23, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

West Virginia Department of Mines, Oil and Gas Division

FERC Control Number: JD79-4044
API Well Number: 47-007-1207
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Norman No. 1
Field: Aspinall Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-4045
API Well Number: 47-007-1324
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Bee No. 1
Field: Aspenal Finster
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 25 MMcf.

FERC Control Number: JD79-4046
API Well Number: 47-007-1325
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Coberly No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 30 MMcf.

FERC Control Number: JD79-4047
API Well Number: 47-007-1326
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Feeney No. 2
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 40 MMcf.

FERC Control Number: JD79-4048
API Well Number: 47-007-1346
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Amos No. 2
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 48 MMcf.

FERC Control Number: JD79-4049
API Well Number: 47-007-BRAX-1350
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Henderson No. 1
Field: Aspinal Finster
County: Braxton
Purchaser: Equitable Gas Company
Volume: 25 MMcf.

FERC Control Number: JD79-4050
API Well Number: 47-007-1360
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Crutchfield No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 50 MMcf.

FERC Control Number: JD79-4051
API Well Number: 47-007-1201
Section of NGPA: 103
Operator: Braxton Oil & Gas Corp.
Well Name: Feeney No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 30 MMcf.

FERC Control Number: JD79-4052
API Well Number: 47-041-2-21850000
Section of NGPA: 103
Operator: H. E. Acker & James H. Hall
Well Name: Rinehart No. 1
Field: Hackers Creek
County: Lewis
Purchaser: Consolidated Gas Supply Corp.
Volume: 28 MMcf.

FERC Control Number: JD79-4053
API Well Number: 47-041-2525
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Eckes No. 1
Field: Vandalia
County: Lewis
Purchaser: Equitable Gas Company
Volume: 50 MMcf.

FERC Control Number: JD79-4054
API Well Number: 477-041-2543
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Mequain No. 1
Field: Vandalia
County: Lewis
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79-4055
API Well Number: 47-021-2430
Section of NGPA: 108
Operator: Braxton Oil & Gas Corporation
Well Name: Darnall No. 1
Field: Aspinall Finster
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume:

FERC Control Number: JD79-4056
API Well Number: 47-021-2842
Section of NGPA: 103
Operator: Braxton Oil & Gas Corporation
Well Name: Miller No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 9 MMcf.

FERC Control Number: JD79-4057
API Well Number: 47-007-1201
Section of NGPA: 108
Operator: Braxton Oil & Gas Corporation
Well Name: Feeney No. 1
Field: Heaters
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 30 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15356 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-355]

West Penn Power Co. and Duquesne Light Co.; Changes in Rates and Charges

May 10, 1979.

The filing Company submits the following:

Take notice that Allegheny Power Service Corporation (APSC) on May 7, 1979, tendered for filing on behalf of West Penn Power Company (West Penn), one of the electric utilities which make up the integrated Allegheny Power System, and Duquesne Light Company (Duquesne), Amendment No. 8 to the Interchange Agreement dated February 1, 1968 between West Penn and Duquesne designated West Penn Rate Schedule FPC No. 24 and Duquesne Rate Schedule FPC No. 9.

Amendment No. 8 provides, effective May 1, 1979, for participation by the parties in economy transactions involving systems which are not parties to the Agreement.

Under the proposed Amendment, transactions with systems not a party to the Agreement between the parties would be priced, as are those under the Agreement between the parties, on the basis of costs incurred, plus a sharing by all of the participants of the savings realized by the ultimate receiving system. Transmission losses are one of the costs incurred. Each system participating in an economy energy transaction other than as the supplying or receiving system would receive 15% of the savings and the supplying and ultimate receiving systems would divide the remainder of the savings. Applicants state that the proposed 15% of savings allocated to each intermediate system was arrived at through negotiation and is intended to recognize participation in the transaction. Applicants further state that since economy energy transactions are by nature not firm and depend on several factors, including the availability of economy energy, the need of another system for such energy and possible transmission restrictions, it is impossible to estimate the transactions and revenues resulting from the proposed service. Applicants further state that no facilities are required to be installed or modified in order to provide the proposed service.

Any person desiring to be heard or protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 1, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15358 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 30, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Kansas State Corporation Commission, Conservation Division

FERC Control Number: JD79-3346
API Well Number: 15-097-020467
Section of NGPA: 103
Operator: TGT Petroleum Corporation
Well Name: End Wrench #1
Field: Einsel
County: Kiowa
Purchaser:
Volume: 90 MMcf.

FERC Control Number: JD79-3347
API Well Number: 15-093-20429
Section of NGPA: 103
Operator: Geo. R. Shaw
Well Name: Smalley 2-32
Field: Panoma Council Grove
County: Kearny
Purchaser: Peoples Natural Gas Company
Volume: 40 MMcf.

FERC Control Number: JD79-3348
API Well Number: 15-093-20430
Section of NGPA: 103
Operator: Geo. R. Shaw
Well Name: Smalley 2-35
Field: Panoma Council Grove
County: Kearny
Purchaser: Peoples Natural Gas Company
Volume: 100 MMcf.

FERC Control Number: JD79-3349
API Well Number: 15-053-20269
Section of NGPA: 108
Operator: Ilus Industries, Inc.
Well Name: Schneider #1
Field: Ellsworth Pool
County: Ellsworth
Purchaser: Northern Natural Gas Company
Volume: 2.08 MMcf.

FERC Control Number: JD79-3350
API Well Number: 15-053-20306
Section of NGPA: 108
Operator: Ilus Industries, Inc.
Well Name: Griffin #1
Field: Ellsworth Pool
County: Ellsworth
Purchaser: Northern Natural Gas Co.
Volume: 6,120 MMcf.

FERC Control Number: JD79-3351
API Well Number: 15-053-20279
Section of NGPA: 108
Operator: Ilus Industries, Inc.
Well Name: Svaty #1
Field: Ellsworth Pool
County: Ellsworth
Purchaser: Northern Natural Gas Co.
Volume: 14.400 MMcf.

FERC Control Number: JD79-3352
API Well Number: 15-093-20519
Section of NGPA: 103
Operator: Beren Corporation
Well Name: Sanford "A" #1
Field: Panoma Council Grove
County: Kearny
Purchaser: Cities Service Gas Co.
Volume: 200 MMcf.

FERC Control Number: JD79-3353
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #L Hanhardt
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 69 MMcf.

FERC Control Number: JD79-3354
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Giesick 'A'
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 69 MMcf.

FERC Control Number: JD79-3355
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Foos 'A'
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 98 MMcf.

FERC Control Number: JD79-3356
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Rothe 'A'
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 33 MMcf.

FERC Control Number: JD79-3357
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Appl
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 89 MMcf.

FERC Control Number: JD79-3358
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Bieber
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 75 MMcf.

FERC Control Number: JD79-3359
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Foos
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 80 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15359 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On May 1, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Kansas State Corporation Commission, Conservation Division

FERC Control Number: JD79-3398
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Hanhardt 'A'
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 186 MMcf.

FERC Control Number: JD79-3399
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Kleweno
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 87 MMcf.

FERC Control Number: JD79-3400
API Well Number:
Section of NGPA: 108
Operator: George A. Angle
Well Name: #1 Rothe 'B'
Field: Reichel
County: Rush
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 36 MMcf.

FERC Control Number: JD79-3401
API Well Number: 15-097-20433
Section of NGPA: 102
Operator: Imperial Oil Company
Well Name: Davis No. 2-18
Field: Vod
County: Kiowa
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 120 MMcf.

FERC Control Number: JD79-3402
API Well Number: 15-097-20429
Section of NGPA: 102
Operator: Imperial Oil Company
Well Name: Huck No. 1-17
Field: Wildcat
County: Kiowa
Purchaser: Northern Natural Gas Company
Volume: 100 MMcf.

FERC Control Number: JD79-3403
API Well Number: 15-047-20278
Section of NGPA: 102
Operator: Imperial Oil Company
Well Name: Curtis No. 1-11
Field: Wildcat
County: Edwards
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 50 MMcf.

FERC Control Number: JD79-3404
API Well Number: 15-047-20327
Section of NGPA: 102
Operator: Imperial Oil Company
Well Name: Full Service No. 1-14
Field: Ext. Britton W
County: Edwards
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 100 MMcf.

FERC Control Number: JD79-3405
API Well Number: 15-047-20249
Section of NGPA: 102
Operator: Imperial Oil Company
Well Name: Mull No. 2-33
Field: Mull
County: Edwards
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 100 MMcf.

FERC Control Number: JD79-3406
API Well Number: 15-035-21737
Section of NGPA: 103
Operator: Range Oil Company, Inc.
Well Name: #3 Voorhis
Field: Nigger Creek
County: Cowley
Purchaser: Cities Service Gas Company
Volume: 24 MMcf.

FERC Control Number: JD79-3407
API Well Number: 15-035-2172
Section of NGPA: 103
Operator: Range Oil Company, Inc.
Well Name: #1 Briley Gas Unit
Field: Nigger Creek
County: Cowley
Purchaser: Cities Service Gas Company
Volume: 60 MMcf.

FERC Control Number: JD79-3408
API Well Number: 15-035-21229
Section of NGPA: 103
Operator: Range Oil Company, Inc.
Well Name: #1 Richardson Gas Unit
Field: Nigger Creek
County: Cowley
Purchaser: Cities Service Gas Company
Volume: 60 MMcf.

FERC Control Number: JD79-3409
API Well Number: 15-119-20199
Section of NGPA: 108
Operator: Zenith Drilling Corporation, Inc.
Well Name: Phillips #1
Field: Angell
County: Meade
Purchaser: Panhandle Eastern Pipe Line Co.
Volume: 6.6 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15360 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 30, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Montana Department of Natural Resources and Conservation, Board of Oil and Gas Conservation

FERC Control Number: JD79-3360
API Well Number: 25-083-21231
Section of NGPA: 103
Operator: Pennzoil Company
Well Name: Pennzoil-Pederson #1
Field: Lonetree Creek
County: Richland
Purchaser: Montana-Dakota Utilities Co.
Volume:

FERC Control Number: JD79-3361
API Well Number: 25-083-21107
Section of NGPA: 102
Operator: Pennzoil Company
Well Name: Pennzoil-Franz #1
Field: South Fork
County: Richland
Purchaser: Montana-Dakota Utilities Co.
Volume: 48 MMcf.

FERC Control Number: JD79-3362
API Well Number: 25-083-21213
Section of NGPA: 102
Operator: Pennzoil Company
Well Name: Pennzoil-Sawyer #1
Field: South Fork
County: Richland
Purchaser: Montana-Dakota Utilities Co.
Volume: 48 MMcf.

FERC Control Number: JD79-3363
API Well Number: 25-071-21358
Section of NGPA: 108
Operator: Midlands Gas Corporation
Well Name: 2012 #1 Simanton
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 12 MMcf.

FERC Control Number: JD79-3364
API Well Number: 25-083-21198
Section of NGPA: 102
Operator: Pennzoil Company
Well Name: Pennzoil-Larson #2
Field: East Putnam
County: Richland
Purchaser: Montana-Dakota Utilities Co.
Volume: 14 MMcf.

FERC Control Number: JD79-3365
API Well Number: 25-101-21651
Section of NGPA: 103
Operator: Burton/Hawks, Inc.
Well Name: Page #2-1
Field: South Kevin
County: Toole
Purchaser: Aloe Ventures Ltd.
Volume: 300.0 MMcf.

FERC Control Number: JD79-3366
API Well Number: 25-071-21567
Section of NGPA: 102
Operator: Midlands Gas Corporation
Well Name: 2171 1-2171 R Anderson
Field: Bowdoin
County: Phillips
Purchaser: Kansas-Nebraska Natural Gas Co., Inc.
Volume: 24 MMcf.

FERC Control Number: JD79-3367
API Well Number: 25-083-21169
Section of NGPA: 102
Operator: Pennzoil Company
Well Name: Pennzoil-Larson #1
Field: East Putnam
County: Richland
Purchaser: Montana-Dakota Utilities Co.
Volume: 7 MMcf.

FERC Control Number: JD79-3368
API Well Number: 25-051-21447
Section of NGPA: 102
Operator: Burton/Hawks, Inc.
Well Name: Shettel No. 1
Field: New Field
County: Liberty
Purchaser: The Montana Power Co.
Volume: 180. 0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final deteminations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-15361 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Montana Department of Natural Resources and Conservation, Board of Oil and Gas Conservation

FERC Control Number: JD79-3538
API Well Number: 20-071-21565
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: Norman W. Johnsrud #1-0971
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume

FERC Control Number: JD79-3539
API Well Number: 25-075-22001
Section of NGPA: 103
Operator: Petroquest Inc.
Well Name: Petroquest Inc. Janssen #2
Field: Pumpkin Creek
County: Powder River
Purchaser: Montana-Dakota Utilities Co.
Volume: 160 MMcf.

FERC Control Number: JD79-3540
API Well Number: 25-041-21313
Section of NGPA: 108
Operator: Bolin Oil Company
Well Name: Bolin-Frost-Paulsen #1
Field: Tiger Ridge
County: Hill
Purchaser: Northern Natural Gas Company
Volume: 25,266 MMcf.

FERC Control Number: JD79-3541
API Well Number: 25-071-21562
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: Montana Power State #1-3671
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume: 3,869.00 MMcf.

FERC Control Number: JD79-3542
API Well Number: 25-071-21669
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: Shenandoah State #1-1862A
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume

FERC Control Number: JD79-3543
API Well Number: 25-083-21182
Section of NGPA: 102
Operator: Brownlie, Wallace, Armstrong and Bander
Well Name: Rau 20-23 R
Field:
County: Richland
Purchaser: Montana Dakota Utilities Co.
Volume: 6.000 MMcf.

FERC Control Number: JD79-3544
API Well Number: 25-083-21172
Section of NGPA: 102
Operator: Brownlie, Wallace, Armstrong and Bander
Well Name: Rau 15-43
Field:
County: Richland
Purchaser: Montana Dakota Utilities
Volume: .900 MMcf.

FERC Control Number: JD79-3545
API Well Number: 25-071-21653
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: Murdock #1-0762
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume:

FERC Control Number: JD79-3546
API Well Number: 25-071-21630
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: Olsen #1-2371
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume:

FERC Control Number: JD79-3547
API Well Number: 25-071-21566
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: La Roche-Harrison #1-2571
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume:

FERC Control Number: JD79-3548
API Well Number: 25-071-21632
Section of NGPA: 102
Operator: Joseph J. C. Paine and Associates
Well Name: Anderson #1-0562
Field:
County: Phillips
Purchaser: Kansas-Nebraska Natural Co.
Volume: 130,889.00 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within on or before June 1, 1979. Please reference the FERC Control Number in any Correspondence concerning a determination.

Kenneth F. Plumb.

Secretary.

[FR Doc. 79-15362 Filed 5-16-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On May 1, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

North Dakota State Industrial Commission, Oil and Gas Division

FERC Control Number: JD79-5649
API Well Number: 33-025-00097
Section: 102
Operator: Gulf Oil Corporation
Well Name: Dolezal State 2-7-4D
Field: Little Knife
County: Dunn
Purchaser: Montana Dakota Utilities
Volume: 217 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15363 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 25, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

Ohio Department of Natural Resources

FERC Control Number: JD79-3619
API Well Number: 3402520206**14
Section: 108
Operator: John C. Mason
Well Name: Daniel & Faye Levers 1
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 18 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15364 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 30, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274,104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of California-Resources Agency, Department of Conservation, Division of Oil and Gas

FERC Control Number: JD79-3335
API Well Number: 039-20021
Section of NGPA: 103
Operator: Atlantic Oil Co.
Well Name: "Kerhy Properties" 1
Field: Moffat Ranch
County: Madera
Purchaser: Pacific Gas and Electric Co.
Volume: 200.0 MMcf.

FERC Control Number: JD79-3336
API Well Number: 077-00123
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "Signet-Brown" 33-23
Field: McMullin Ranch Gas
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 18.1 MMcf.

FERC Control Number: JD79-3337
API Well Number: 077-00015
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "McMullin" 4X-25
Field: McMullin Ranch
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 16.5 MMcf.

FERC Control Number: JD79-3338
API Well Number: 077-00116
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "Occidental-Dutra" 32-25
Field: McMullin Ranch
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 10.8 MMcf.

FERC Control Number: JD79-3339
API Well Number: 077-00121
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "Occidental-Whiting" 87X-23
Field: McMullin Ranch Gas
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 1.1 MMcf.

FERC Control Number: JD79-3340
API Well Number: 077-20164
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "Maciel Bros." 1-16
Field: Vernalis
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 10.01 MMcf.

FERC Control Number: JD79-3341
API Well Number: 077-00256
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "Mohawk-Boltzen-Hunter" 76-10
Field: Vernalis
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 12.0 MMcf.

FERC Control Number: JD79-3342
API Well Number: 011-20099
Section of NGPA: 103
Operator: Great Basins Petroleum Co.
Well Name: "Steidlmayer" 3-10
Field: Moon Bend
County: Colusa
Purchaser: Pacific Gas and Electric Co.
Volume: 182.5 MMcf.

FERC Control Number: JD79-3343
API Well Number: 011-20100
Section of NGPA: 103
Operator: Great Basins Petroleum Co.
Well Name: "Halsey" 2-3
Field: Moon Bend
County: Colusa
Purchaser: Pacific Gas and Electric Co.
Volume: 37.0 MMcf.

FERC Control Number: JD79-3344
API Well Number: 077-00260
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "Vernalis Unit 2" 14-15
Field: Vernalis Gas
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 16.18 MMcf.

FERC Control Number: JD79-3345
API Well Number: 077-00014
Section of NGPA: 108
Operator: Great Basins Petroleum Co.
Well Name: "McMullin" 2Y-26
Field: McMullin Ranch
County: San Joaquin
Purchaser: Pacific Gas and Electric Co.
Volume: 1.3 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15365 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 9, 1979.

On April 2, 1979, the Federal Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State Determination of Texas

FERC Control Number: JD79-2734
API Well Number: 30039072920000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-6 Unit 16
Field: Blanco-Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 14.2 MMcf.

FERC Control Number: JD79-2735
API Well Number: 30039061410000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit 50
Field: Ballard-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15366 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdiction Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below or determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Ohio Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-3125
API Well Number: 34-133-2-1706**14
Section of NGPA: 103
Operator: Inland Drilling Co., Inc.
Well Name: Prusak No. 1
Field:
County: Portage
Purchaser:
Volume: 17,376 MMcf.

FERC Control Number: JD79-3126
API Well Number: 34-153-2-0594**14
Section of NGPA: 103
Operator: Inland Drilling Co., Inc.
Well Name: Wartko Bunker Unit No. 1
Field:
County: Summit
Purchaser:
Volume: 1.512 MMcf.

FERC Control Number: JD79-3127
API Well Number: 34-133-2-1319**14
Section of NGPA: 103
Operator: Inland Drilling Co., Inc.
Well Name: Hannum No. 1
Field:
County: Portage
Purchaser:
Volume: 5,023 MMcf.

FERC Control Number: JD79-3128
API Well Number: 3411924486**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: George Ashford No. 1
Field:
County: Muskingum
Purchaser:
Volume: 8.10 MMcf.

FERC Control Number: JD79-3129
API Well Number: 3411521733**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: Shirley Savage No. 1
Field:
County: Morgan
Purchaser:
Volume: 8.0 MMcf.

FERC Control Number: JD79-3130
API Well Number: 3408923555**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: Warren Mears No. 1
Field:
County: Licking
Purchaser:
Volume: 10.0 MMcf.

FERC Control Number: JD79-3131
API Well Number: 3415723236**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: William Lile No. 1
Field:
County: Tuscarawas
Purchaser:
Volume: 9.0 MMcf.

FERC Control Number: JD79-3132
API Well Number: 3403123298**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: Harold E. Lowery No. 1
Field:
County: Coshocton
Purchaser:
Volume: 10.0 MMcf.

FERC Control Number: JD79-3133
API Well Number: 3411924487**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: Emery Elkington No. 1
Field:
County: Muskingum
Purchaser:
Volume: 10.0 MMcf.

FERC Control Number: JD79-3134
API Well Number: 34-127-2-4228**14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Brent and Robert Martin No. 1
Field: Thorn
County: Perry
Purchaser: Columbia Gas Company
Volume: 20 MMcf.

FERC Control Number: JD79-3135
API Well Number: 3411924588**14
Section of NGPA: 103
Operator: Sheldon L. Turrill
Well Name: No. 1 Ark Springs Baptist Church
Field:
County: Muskingum
Purchaser: The East Ohio Gas Company
Volume: 100 MMcf.

FERC Control Number: JD79-3136
API Well Number: 34-121-2-2074**14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Ohio Power Foraker
Field:
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-3137
API Well Number: 34-121-2-2073**14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Cecil Cain No. 1
Field:
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-3138
API Well Number: 34-121-2-2106**14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Todd Johnson Wheeler No. 1
Field:
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-3139
API Well Number: 34-133-2-1828**14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Gabyan Haught Unit Well No. 2

Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1.9 MMcf.

FERC Control Number: JD79-3140
API Well Number: 34-133-2-1742**14
Section of NGPA: 103
Operator: R. D. Curry Production Company
Well Name: Lassen Traylor McKinney Unit No. 1
Field:
County: Portage
Purchaser: The East Ohio Gas Company
Volume: 1.9 MMcf.

FERC Control Number: JD79-3141
API Well Number: 34-151-2-2923**14
Section of NGPA: 103
Operator: Schwanco, Inc.
Well Name: Spuhler No. 2-A
Field:
County: Spark
Purchaser:
Volume: 20 MMcf.

FERC Control Number: JD79-3142
API Well Number: 3401921193**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: William Ashworth No. 2
Field:
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-3143
API Well Number: 3401921177**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: H. Gartrell et. al. No. 5
Field:
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-3144
API Well Number: 3401921176**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: H. Gartrell et al. No. 6
Field:
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-3145
API Well Number: 3415723173**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: A and D Glass No. 5-A
Field:
County: Tuscarawas
Purchaser: The East Ohio Gas Company
Volume: 50 MMcf.

FERC Control Number: JD79-3146
API Well Number: 3401921235**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: Harry W. Gartrell et al. No. 4
Field:
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-3147
API Well Number: 3401921131**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: Harry W. Gartrell et al. No. 3
Field:
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-3148
API Well Number: 3415722858**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: Ruth I. Helter et al. No. 3
Field:
County: Tuscarawas
Purchaser: The East Ohio Gas Company
Volume: 43 MMcf.

FERC Control Number: JD79-3149
API Well Number: 3415722832**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: R. I. Helter No. 2
Field:
County: Tuscarawas
Purchaser: The East Ohio Gas Company
Volume: 8 MMcf.

FERC Control Number: JD79-3150
API Well Number: 3405922100**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: V and M Grimsley Unit No. 2
Field:
County: Guernsey
Purchaser: The East Ohio Gas Company
Volume: 25 MMcf.

FERC Control Number: JD79-3151
API Well Number: 3405922101**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: V and M Grimsley Unit No. 1
Field:
County: Guernsey
Purchaser: The East Ohio Gas Company
Volume: 25 MMcf.

FERC Control Number: JD79-3152
API Well Number: 34-121-2-2111**14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Clem Garvin No. 1
Field:
County: Noble
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-3153
API Well Number: 34103222094**14
Section of NGPA: 103
Operator: Green Gas Company
Well Name: Metzger No. 1
Field:
County: Nedina
Purchaser: Columbia Gas Transmission Corp.
Volume: 2½ MMcf.

FERC Control Number: JD79-3154
API Well Number: 3403123345**14
Section of NGPA: 103
Operator: Toledo Spring Company
Well Name: Daniel Nisley No. 2
Field:
County: Coshocton
Purchaser:
Volume: 28 MMcf.

FERC Control Number: JD79-3155
API Well Number: 3403123361**14
Section of NGPA: 103
Operator: Toledo Spring Company
Well Name: Mitchell G. Blizzard No. 1
Field:
County: Coshocton
Purchaser:
Volume: 28 MMcf.

FERC Control Number: JD79-3156
API Well Number: 3415521159**14
Section of NGPA: 103
Operator: Mash Investment Company
Well Name: Mash Investment No. 2
Field:
County: Trumbull
Purchaser:
Volume: 37 MMcf.

FERC Control Number: JD79-3157
API Well Number: 3411924412**14
Section of NGPA: 103
Operator: The Oxford Oil Company
Well Name: James Fogelsong No. 1
Field:
County: Muskingum
Purchaser:
Volume: 10.0 MMcf.

FERC Control Number: JD79-3158
API Well Number: 3415122908**14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: Ross Smith Unit No. 1
Field:
County: Stark
Purchaser: East Ohio Gas Company
Volume: 18 MMcf.

FERC Control Number: JD79-3159
API Well Number: 3415122895**14
Section of NGPA: 103
Operator: New Frontier Exploration, Inc.
Well Name: J. H. Taylor No. 2-A
Field:
County: Stark
Purchaser: East Ohio Gas Company
Volume: 17 MMcf.

FERC Control Number: JD79-3160
API Well Number: 3415122300**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Isabella Reynolds No. 1 67037-00
Field:
County: Stark
Purchaser: East Ohio Gas Company
Volume: 5.840 MMcf.

FERC Control Number: JD79-3161
API Well Number: 3415721102**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Helwig No. 1 67231-00
Field:
County: Tuscarawas
Purchaser: East Ohio Gas Company
Volume: 7.665 MMcf.

FERC Control Number: JD79-316243
API Well Number: 3412723516**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Lovella Swingle No. 1 69138-00
Field:
County: Perry
Purchaser: National Gas and Oil Corp.
Volume: 3.65 MMcf.

FERC Control Number: JD79-3163
API Well Number: 3412722630**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corporation
Well Name: Perry No. 1 69137-00
Field:

County: Perry
Purchaser: Columbia Gas Transmission Corp.
Volume: 2.92 MMcf.

FERC Control Number: JD79-3164
API Well Number: 3412722597**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corporation
Well Name: Otts No. 69136-00
Field:
County: Perry
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.65 MMcf.

FERC Control Number: JD79-3165
API Well Number: 3411521273**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Silvus Unit No. 69127-00
Field:
County: Morgan
Purchaser: East Ohio Gas Company
Volume: 8.76 MMcf.

FERC Control Number: JD79-3166
API Well Number: 3411923105**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Frame No. 1 69124-0
Field:
County: Muskingum
Purchaser: National Gas and Oil Corp.
Volume: 15.695 MMcf.

FERC Control Number: JD79-3167
API Well Number: 3411923092**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Virgil Mitchell No. 69122-00
Field:
County: Muskingum
Purchaser: National Gas and Oil Corporation
Volume: 1.825 MMcf.

FERC Control Number: JD79-3168
API Well Number: 3409920234**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Green Valley Farms No. 1 67038-00
Field:
County: Mahoning
Purchaser: East Ohio Gas Company
Volume: 10.950.

FERC Control Number: JD79-3169
API Well Number: 3405520035**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Hostetler No. 1 67506-00
Field:
County: Geauga
Purchaser: East Ohio Gas Company
Volume: 10.950 MMcf.

FERC Control Number: JD79-3170
API Well Number: 3405520027**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Oravec No. 1 67500-00
Field:
County: Geauga
Purchaser: East Ohio Gas Company
Volume: 9.49 MMcf.

FERC Control Number: JD79-3171
API Well Number: 3401920404**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: M. W. C.-D. No. 2-67035
Field:
County: Carroll
Purchaser: Marsh Belden
Volume: 3.502 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15367 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-3191
API Well Number: 3403122853**14
Section of NGPA: 108
Operator: ConPetro Ventures, Ltd.
Well Name: Peabody No. 5
Field: N/A
County: Coshocton
Purchaser: National Gas & Oil Corp.
Volume: 13 MMcf.

FERC Control Number: JD79-3192
API Well Number: 3403122855**14
Section of NGPA: 108
Operator: ConPetro Ventures, Ltd.
Well Name: Peabody No. 3
Field: N/A
County: Coshocton
Purchaser: National Gas & Oil Corp.
Volume: 13 MMcf.

FERC Control Number: JD79-3193
API Well Number: 3403122860**14
Section of NGPA: 108
Operator: ConPetro Ventures, Ltd.
Well Name: Peabody No. 2
Field: N/A
County: Coshocton
Purchaser: National Gas & Oil Corp.
Volume: 13 MMcf.

FERC Control Number: JD79-3194
API Well Number: 3411923303**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Kimpel No. 2
Field: N/A
County: Muskingum
Purchaser: National Gas & Oil Corp.
Volume: 5,000 MMcf.

FERC Control Number: JD79-3195
API Well Number: 3403122100**14
Section of NGPA: 108
Operator: The Clinton Oil Co.
Well Name: Charles Vickers No. 1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume: 8,000 MMcf.

FERC Control Number: JD79-3196
API Well Number: 3415121149**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Garrott-Lillie No. 1 67040-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 1.825 MMcf.

FERC Control Number: JD79-3197
API Well Number: 3415122219**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: F. & B. Moser No. 1 67140-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 11.680 MMcf.

FERC Control Number: JD79-3198
API Well Number: 3401920775**14
Section of NGPA: 108
Operator: Quaker State Oil & Refining Corp.
Well Name: Fisher No. 1 67149-01
Field: N/A
County: Carroll
Purchaser: East Ohio Gas Co.
Volume: 2.367 MMcf.

FERC Control Number: JD79-3199
API Well Number: 3401920774**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Fisher No. 2 67149-02
Field: N/A
County: Carroll
Purchaser: East Ohio Gas Co.
Volume: 1.620 MMcf.

FERC Control Number: JD79-3200
API Well Number: 3401920797**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Leeper-Clark No. 1 67151-00
Field: N/A
County: Carroll
Purchaser: East Ohio Gas Co.
Volume: 2.190 MMcf.

FERC Control Number: JD79-3201
API Well Number: 3415821056**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Wallick Coal Co. No. 1 67230-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 8.76 MMcf.

FERC Control Number: JD79-3202
API Well Number: 340092147914
Section of NGPA: 108
Operator: John R. Bickle
Well Name: Howard A. Johnson B3
Field: Amesville
County: Athens
Purchaser: Columbia Gas Transmission Corp.
Volume: .9 MMcf.

FERC Control Number: JD79-3203
API Well Number: 3411922097**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Sandel No. 1 69111-00
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Co.
Volume: 4.015 MMcf.

FERC Control Number: JD79-3204
API Well Number: 3411922110**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Mozena No. 1 69112-00
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 1.825 MMcf.

FERC Control Number: JD79-3205
API Well Number: 3411922159**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Radcliffe No. 1 69114-00
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 4.015 MMcf.

FERC Control Number: JD79-3206
API Well Number: 3411922120**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCormick No. 1 69113-01
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Co.
Volume: 0.899 MMcf.

FERC Control Number: JD79-3207
API Well Number: 3411922194**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCormick No. 2 69113-02
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Co.
Volume: 0.234 MMcf.

FERC Control Number: JD79-3208
API Well Number: 3411922183**14
Section of NGPA: 108
Operator: Mineral Leasing Inc.
Well Name: Hanna Coal No. 1
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.3 MMcf.

FERC Control Number: JD 79-3209
API Well Number: 3411922315**14
Section of NGPA: 108
Operator: Mineral Leasing, Inc.
Well Name: Hansel #2
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.5 MMcf.

FERC Control Number: JD 79-3210
API Well Number: 3415721900**14
Section of NGPA: 108
Operator: K-B Oil Co.
Well Name: Weingarth #1
Field: N/A
County: Tuscarawas
Purchaser: Columbia Gas Transmission Corp.
Volume: 4.6 MMcf.

FERC Control Number: JD 79-3211
API Well Number: 3405920958**14
Section of NGPA: 108
Operator: Walter F. Fox
Well Name: Fow-Wells #1
Field: N/A
County: Guernsey
Purchaser: Columbia Gas Transmission Corp.
Volume: 11.3 MMcf.

FERC Control Number: JD 79-3212
API Well Number: 3403123039**14
Section of NGPA: 108
Operator: ConPetro, Inc.
Well Name: Peabody Coal Co. #31
Field: N/A
County: Coshocton
Purchaser: National Gas & Oil Corp.
Volume: 17 MMcf.

FERC Control Number: JD 79-3213
API Well Number: 3403122705**14
Section of NGPA: 108
Operator: Kenner McConnell, Jr.
Well Name: Ronald Stillions #1
Field: N/A
County: Coshocton
Purchaser: Columbia Gas Transmission Corp.
Volume:

FERC Control Number: JD 79-3214
API Well Number: 34 167 2 2806 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Barlow #1 69128-00
Field: N/A
County: Washington
Purchaser: Columbia Gas Transmission Corp.
Volume: 0.73 MMcf.

FERC Control Number: JD 79-3215
API Well Number: 34 167 2 2819 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Hall #1 69130-00
Field: N/A
County: Washington
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.65 MMcf.

FERC Control Number: JD 79-3216
API Well Number: 34 167 2 2760 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Haas #1 69129-00
Field: N/A
County: Washington.
Purchaser: Columbia Gas Transmission Corp.
Volume: 1.46 MMcf.

FERC Control Number: JD 79-3217
API Well Number: 34 157 2 1053 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Briggs #1 69002-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 5.11 MMcf.

FERC Control Number: JD 79-3218
API Well Number: 34 157 2 1036 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Brokaw-Schupp #1 69003-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 5.84 MMcf.

FERC Control Number: JD 79-3219
API Well Number: 34 157 2 1072 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: E. Schupp #2 69005-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 2.555 MMcf.

FERC Control Number: JD 79-3220
API Well Number: 34 157 2 1083 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Flocker #1 69007-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 5.84 MMcf.

FERC Control Number: JD 79-3221
API Well Number: 34 157 2 1079 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: R. Rice #1 69008-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 3.285 MMcf.

FERC Control Number: JD 79-3222
API Well Number: 34 157 2 1078 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: L. Swaldo #1 69009-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 3.285 MMcf.

FERC Control Number: JD 79-3223
API Well Number: 34 151 2 2406 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Raber #1 67713-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 17.155 MMcf.

FERC Control Number: JD 79-3224
API Well Number: 34 151 2 2404 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Brugger Moser #1 67714-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 3.2855 MMcf.

FERC Control Number: JD 79-3225
API Well Number: 34 157 2 1029 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Skinner #1 69004-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 0.73 MMcf.

FERC Control Number: JD 79-3226
API Well Number: 34 019 2 0875 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: C. P. Snee #1 67715-00

Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 2.555 MMcf.

FERC Control Number: JD 79-3227
API Well Number: 34 019 2 0876 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: K. Huffman #1 67716-00
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 5.84 MMcf.

FERC Control Number: JD 79-3228
API Well Number: 34 019 2 0877 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: R. & L. Newell #1 67717-00
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 4.745 MMcf.

FERC Control Number: JD 79-3229
API Well Number: 34 151 2 1228 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Brugger #1 67718-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 16.06 MMcf.

FERC Control Number: JD 79-3230
API Well Number: 34 119 2 2161 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: E. Bell #1 69115-00
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 5.11 MMcf.

FERC Control Number: JD 79-3231
API Well Number: 34 119 2 2135 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Lake #1 69116-00
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Co.
Volume: 5.475 MMcf.

FERC Control Number: JD 79-3232
API Well Number: 34 118 2 2162 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Matchett #1 69117-00
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 9.855 MMcf.

FERC Control Number: JD 79-3233
API Well Number: 34 119 2 2202 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Leasure #1 69118-00
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 4.015 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office Of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15368 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-3234
API Well Number: 34 119 2 2160 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Mercer #1 69119-00
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 2.555 MMcf.

FERC Control Number: JD79-3235
API Well Number: 3416724100**14
Section of NGPA: 102
Operator: A & R Company
Well Name: Hazel B. Hoff et al. No. 1
Field: N/A
County: Washington
Purchaser:
Volume: 50 MMcf.

FERC Control Number: JD79-3236
API Well Number: 3416723996**14
Section of NGPA: 10A & R Company
Operator: 2
Well Name: Joseph C. & Grace Eddy No. 1-b
Field: N/A
County: Washington
Purchaser:
Volume: 12 MMcf.

FERC Control Number: JD79-3237
API Well Number: 34 073 2 1649 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Grace B. Hull #8 69143-08
Field: N/A
County: Hocking
Purchaser: Columbia Gas Transmission Corp.
Volume: 0.120 MMcf.

FERC Control Number: JD79-3238
API Well Number: 311923301**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Rayburn Miller #1
Field: N/A
County: Muskingum
Purchaser: Clinton/Newzane Gas Co.
Volume: 2,000 MMcf.

FERC Control Number: JD79-3239
API Well Number: 3410521795**14
Section of NGPA: 103
Operator: Larry H. Wright, Inc.
Well Name: Max Grueser #1
Field: N/A
County: Meigs
Purchaser:
Volume: 10 MMcf.

FERC Control Number: JD79-3240
API Well Number: 3407522013**14
Section of NGPA: 103
Operator: Morgan-Penmnington, Inc.
Well Name: Noble No. 1
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 5.0 MMcf.

FERC Control Number: JD79-3241
API Well Number: 3416922037**14
Section of NGPA: 103
Operator: Morgan-Pennington, Inc.
Well Name: Deweese No. 1
Field: N/A
County: Wayne
Purchaser: East Ohio Gas Co.
Volume: 5.2 MMcf.

FERC Control Number: JD79-3242
API Well Number: 3416922055**14
Section of NGPA: 103
Operator: Morgan-Pennington, Inc. & MPS Oil & Gas
Well Name: Pontius No. 1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Transmission Corp.
Volume: 18.25 MMcf.

FERC Control Number: JD79-3243
API Well Number: 3407521969**14
Section of NGPA: 103
Operator: Morgan-Pennington, Inc.
Well Name: Kineley No. 1
Field: N/A
County: Holmes
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.7 MMcf.

FERC Control Number: JD79-79-3244
API Well Number: 3405922480**14
Section of NGPA: 103
Operator: Enterprise Gas & Oil Inc.
Well Name: Shriver #3
Field: N/A
County: Guernsey
Purchaser:
Volume: 35.6 MMcf.

FERC Control Number: JD79-3245
API Well Number: 34 151 2 2756 ** 14
Section of NGPA: 103
Operator: Amtex Oil and Gas, Inc.
Well Name: Glessner Well No. 2
Field: N/A
County: Stark
Purchaser: Columbia Gas Transmission Corp.
Volume: 25 MMcf.

FERC Control Number: JD79-3246
API Well Number: 3401921255**14
Section of NGPA: 103
Operator: Enterprise Gas & Oil, Inc.
Well Name: Harstine #3
Field: N/A
County: Carroll
Purchaser:
Volume: 25.5 MMcf.

FERC Control Number: JD79-3247
API Well Number: 3401921054**14
Section of NGPA: 103
Operator: The Mutual Oil & Gas Company
Well Name: Nova R. Harstine et al #2-C
Field: N/A
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-3248
API Well Number: 3416724148**14
Section of NGPA: 103
Operator: Wynn Oil Company
Well Name: Earl Webb #1
Field: N/A
County: Washington
Purchaser: East Ohio Gas Co.
Volume: 4 MMcf.

FERC Control Number: JD79-3249
API Well Number: 3413321572**14
Section of NGPA: 1010e
Operator: Vikings Resoures Corporation
Well Name: George & Betty Burkey, Jr. #1
Field: N/A
County: Portage
Purchaser:
Volume: 30 MMcf.

FERC Control Number: JD79-3250
API Well Number: 3401921126**14
Section of NGPA: 103
Operator: The Mutual Oil & Gas Company
Well Name: Kathryn Myers #1-C
Field: N/A
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-3251
API Well Number: 3401921141**14
Section of NGPA: 103
Operator: The Mutual Oil and Gas Company
Well Name: Nova R. Harstine et al #4-C
Field: N/A
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD-79-3252
API: Well Number 3401921171**14
Section of NGPA: 103
Operator: The Mutual Oil & Gas Company
Well Name: Noel Gartrell et al No. 8.
Field N/A
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD-79-3253
API: Well Number 3401921132**14
Section of NGPA: 103
Operator: The Mutual Oil & Gas Company
Well Name: Nova R. Harstine et al No. 3-C
Field N/A
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 3 MMcf.

FERC Control Number: JD-79-3254
API: Well Number 3401920995**14
Section of NGPA: 103
Operator: The Mutual Oil & Gas Company
Well Name: Landers-Gartrell Unit No. 1
Field N/A
County: Carroll
Purchaser: The East Ohio Gas Company
Volume: 6 MMcf.

FERC Control Number: JD-79-3255
API: Well Number 34-075-2-2122**14
Section of NGPA: 103
Operator: William F. Hill
Well Name: Hunt No. 1
Field N/A
County: Holmes
Purchaser:
Volume: 14 MMcf.

FERC Control Number: JD-79-3256
API: Well Number 34-073-2-1685**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Grace B. Hull No. 10 69143-10
Field N/A
County: Hocking
Purchaser: Columbia Gas Transmission Corp.
Volume: 1.286 MMcf.

FERC Control Number: JD-79-3257
API: Well Number 34-073-2-1684**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Grace B. Hull No. 9 69143-09
Field N/A
County: Hocking
Purchaser: Columbia Gas Transmission Corp.
Volume: 0.477 MMcf.

FERC Control Number: JD-79-3258
API: Well Number 3411923036**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Shuey No. 1B
Field N/A
County: Muskingum
Purchaser: Clinton/Newzane Gas Co.
Volume: 2,000 MMcf.

FERC Control Number: JD-79-3259
API: Well Number 3411923224**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Shuey No. 3
Field N/A
County: Muskingum
Purchaser: Clinton/New Zane Gas Co.
Volume: 2,000 MMcf.

FERC Control Number: JD-79-3260
API: Well Number 3411923770**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Julia Fink No. 1
Field N/A
County: Muskingum
Purchaser: Newzane Gas Co.
Volume: 7,300 MMcf.

FERC Control Number: JD-79-3261
API: Well Number 3411923187**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Bay Unit No. 1
Field N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Co.
Volume: 5,400 MMcf.

FERC Control Number: JD-3262
API: Well Number 3411923188**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Gladys Moore No. 1
Field N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 2,000 MMcf.

FERC Control Number: JD-79-3263
API: Well Number 3411923475**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Lawrence Osborne 1
Field N/A
County: Muskingum
Purchaser: National Gas & Oil Corp.
Volume: 2,000 MMcf.

FERC Control Number: JD-79-3264
API: Well Number 3411923661**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Elmer Ball No. 1
Field N/A
County: Muskingum
Purchaser: National Gas & Oil Corp.
Volume: 15,000 MMcf.

FERC Control Number: JD-3265
API: Well Number 3411922988**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Murphy Unit No. 1
Field N/A
County: Muskingum
Purchaser: National Gas & Oil Corp.
Volume: 6,000 MMcf.

FERC Control Number: JD-79-3266
API: Well Number 3411922940**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Frank White No. 1
Field N/A
County: Muskingum
Purchaser: National Gas & Oil Corp.
Volume: 2,400 MMcf.

FERC Control Number: JD79-3267
API Well Number: 341193222**14
Section of NGPA: 108
Operator: American Exploration Co.
Well Name: Shuey No. 4
Field: N/A
County: Muskingum
Purchaser: Clinton/Newzane Gas Co.
Volume: 10,725 MMcf.

FERC Control Number: JD79-3268
API Well Number: 34-133-2-0659-**-14
Section of NGPA: 108
Operator: Jerry More, Inc.
Well Name: Robert A. Dauman No. 1
Field: Atwater
County: Portage
Purchaser: East Ohio Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79-3269
API Well Number: 34-151-2-2395-**-14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Merle R. Arney Unit No. 5295
Field: Mt. Eaton
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 5.2 MMcf.

FERC Control Number: JD79-3270
API Well Number: 34-151-2-2398-**-14
Section of NGPA: 108
Operator: Jerry Moore, Inc.

Well Name: W. J. Bucher No. 5334
Field: Mt. Eaton
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 3.2 MMcf.

FERC Control Number: JD79-3271
API Well Number: 34-151-2-2397-**-14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Russell Lash Unit No. 5333
Field: Mt. Eaton
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 12.8 MMcf.

FERC Control Number: JD79-3272
API Well Number: 34-151-2-1922-**-14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall No. 8 67023-08
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.873 MMcf.

FERC Control Number: JD79-3273
API Well Number: 34-151-2-1887-**-14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall No. 7 67023-07
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.750 MMcf.

FERC Control Number: JD79-3274
API Well Number: 34 151 2 1888-**-14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #6 67023-06
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.131 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concening a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15369 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M]

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 8, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Ohio, Department of Natural Resources, Division of Oil and Gas

FERC Control Number: JD79-3275
API Well Number: 34 151 2 1889 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #5 67023-05
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 3.217 MMcf.

FERC Control Number: JD79-3276
API Well Number: 34 151 2 1878 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #3 67023-03
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.589 MMcf.

FERC Control Number: JD79-3277
API Well Number: 34 151 2 1868 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #2 67023-02
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.852 MMcf.

FERC Control Number: JD79-3278
API Well Number: 34 151 2 1812 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #1 67023-01
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.0934 MMcf.

FERC Control Number: JD79-3279
API Well Number: 34 019 2 1078 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Snee #2 66558-00
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 9.855 MMcf.

FERC Control Number: JD79-3280
API Well Number: 34-031-2-2325-88-14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Raymond J. Frank #1
Field: Baltic
County: Coshocton
Purchaser: East Ohio Gas Co.
Volume: 1.4 MMcf.

FERC Control Number: JD79-3281
API Well Number: 34-157-2-2278-**-14
Section of NGPA: 108
Operator: Jerry Moore, Inc..
Well Name: Clara Goedel #1
Field: Baltic
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 1.7 MMcf.

FERC Control Number: JD79-3282
API Well Number: 34-157-2-2277-**-14
Section of NGPA: 108
Operator: Jerry Moore, Inc.
Well Name: Rodney Goedel #2
Field: Baltic
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: .7 MMcf.

FERC Control Number: JD79-3283
API Well Number: 3412120205**14
Section of NGPA: 108
Operator: Nova A. Christman
Well Name: Dotson #1
Field: N/A
County: Noble
Purchaser: Columbia Gas Transmission Corp.
Volume: 2.1 MMcf.

FERC Control Number: JD79-3284
API Well Number: 3412120160**14
Section of NGPA: 108
Operator: Nova A. Christman
Well Name: Pepper #1
Field: N/A
County: Noble
Purchaser: Columbia Gas Transmission
Volume: 2.1 MMcf.

FERC Control Number: JD79-3285
API Well Number: 34 005 2 0039 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Timmons #2 67002-00
Field: N/A
County: Geauga
Purchaser: East Ohio Gas Co.
Volume: 2.190 MMcf.

FERC Control Number: JD79-3286
API Well Number: 34 019 2 1067 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: B. & G. Harless #1 66553-00
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 5.475 MMcf.

FERC Control Number: JD79-3287
API Well Number: 34 019 2 1079 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Kenneth Huffman #2 66554-00
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 8.030 MMcf.

FERC Control Number: JD79-3288
API Well Number: 34 019 2 1066 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Newell "A" #2 66550-02
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 1.921 MMcf.

FERC Control Number: JD79-3289
API Well Number: 34 019 2 1072 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Newell "A" #3 66550-03

Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 1.438 MMcf.

FERC Control Number: JD79-3290
API Well Number: 34 019 2 1000 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: J. A. Ludwig #2 66555-00
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 6.570 MMcf.

FERC Control Number: JD79-3291
API Well Number: 34 151 2 1923 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #9 67023-09
Field: N/A
County: Carroll
Purchaser: Marsh-Belden
Volume: 2.610 MMcf.

FERC Control Number: JD79-3292
API Well Number: 34 151 2 1924 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: McCall #10 67023-10
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 0.792 MMcf.

FERC Control Number: JD79-3293
API Well Number: 34 151 2 1925 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corporation
Well Name: McCall-Benzel 67023-11
Field: N/A
County: Stark
Purchaser: Marsh-Belden
Volume: 1.291 MMcf.

FERC Control Number: JD79-3294
API Well Number: 3411921985**14
Section of NGPA: 108
Operator: The Oxford Oil Co.
Well Name: Harry Cornett #1
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Trans. Corp.
Volume: 5.0 MMcf.

FERC Control Number: JD79-3295
API Well Number: 3407521683**14
Section of NGPA: 108
Operator: The Oxford Oil Co.
Well Name: Paul G. Beck #1
Field: N/A
County: Holmes
Purchaser: Columbia Gas Trans. Corp.
Volume: 3.5 MMcf.

FERC Control Number: JD79-3296
API Well Number: 341922552**14
Section of NGPA: 108
Operator: The Oxford Oil Co.
Well Name: Edward Corder #1
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Trans. Corp.
Volume: 18 MMcf.

FERC Control Number: JD79-3297
API Well Number: 3416920414**14
Section of NGPA: 108
Operator: The Oxford Oil Co.
Well Name: Conrad-Graber #1
Field: N/A
County: Wayne
Purchaser: Columbia Gas Trans. Corp.
Volume: 2.0 MMcf.

FERC Control Number: JD79-3298
API Well Number: 3411922772**14
Section of NGPA: 108
Operator: M. W. Conrad & Associates
Well Name: T. Everett Leedom #3
Field: N/A
County: Muskingum
Purchaser: East Ohio Gas Company
Volume: 13 MMcf.

FERC Control Number: JD79-3299
API Well Number: 3411922686**14
Section of NGPA: 108
Operator: M. W. Conrad & Associates
Well Name: T. Everett Leedom #1
Field: N/A
County: Muskingum
Purchaser: The East Ohio Gas Company
Volume: 13 MMcf.

FERC Control Number: JD79-3300
API Well Number: 34 119 2 3082 ** 14
Section of NGPA: 108
Operator: McCombs-Conrad & Barrett
Well Name: Howard Daily #1
Field: N/A
County: Muskingum
Purchaser: The East Ohio Gas Company
Volume: 2.8 MMcf.

FERC Control Number: JD79-3301
API Well Number: 34 005 2 0037 ** 14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Button 67002-00
Field: N/A
County: Geauga
Purchaser: East Ohio Gas Co.
Volume: 1.825 MMcf.

FERC Control Number: JD79-3302
API Well Number: 3415723208**14
Section of NGPA: 103
Operator: K-B Oil Co.
Well Name: Stocker #1A
Field: N/A
County: Tuscarawas
Purchaser:
Volume: 73 MMcf.

FERC Control Number: JD79-3303
API Well Number: 3411121672**14
Section of NGPA: 108
Operator: Charles E. Christman
Well Name: Lucy Drake McCammon No. 1
Field: N/A
County: Monroe
Purchaser: Columbia Gas Transmission
Volume: 0.223.

FERC Control Number: JD79-3304
API Well Number: 341521209**14
Section of NGPA: 108
Operator: Pointer Oil Company
Well Name: Snyder No. 1
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 1.90 MMcf.

FERC Control Number: JD79-3305
API Well Number: 3415721361**14
Section of NGPA: 108
Operator: Mineral Leasing Inc.
Well Name: Glazer No. 1
Field: N/A
County: Tuscarawas
Purchaser: Columbia Gas Transmission Corp.
Volume: 2.9 MMcf.

FERC Control Number: JD79-3306
API Well Number: 3415721350**14
Section of NGPA: 108
Operator: Mineral Leasing Inc.
Well Name: McConnell No. 1
Field: N/A
County: Tuscararwas
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.6 MMcf.

FERC Control Number: JD79-3307
API Well Number: 34119223[illegible]*14
Section of NGPA: 108
Operator: Mineral Leasing Inc.
Well Name: Hansel No. 4
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.5 MMcf.

FERC Control Number: JD79-3308
API Well Number: 3411922372**14
Section of NGPA: 108
Operator: Mineral Leasing Inc.
Well Name: Hanna Coal No. 2
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 14.9 MMcf.

FERC Control Number: JD79-3309
API Well Number: 3411922321**14
Section of NGPA: 108
Operator: Mineral Leasing [illegible]
Well Name: Hansel No. 3
Field: N/A
County: Muskingum
Purchaser: Columbia Gas Transmission Corp.
Volume: 3.5 MMcf.

FERC Control Number: JD79-3310
API Well Number: 3415721075**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: No. 1 Buss Schupp 69000-00
Field: N/A
County: Tuscarawas
Purchaser: East Ohio Gas Co.
Volume: 1.825 MMcf.

FERC Control Number: JD79-3311
API Well Number: 3415122437**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Aufrance No. 1 67712-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 2.19 MMcf.

FERC Control Number: JD79-3312
API Well Number: 3415121229**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: ard Hendricks No. 1 67707-00
Field: N/A
County: Stark
Purchaser: East Ohio Gas Co.
Volume: 1.46 MMcf.

FERC Control Number: JD79-3313
API Well Number: 3411922046**14
Section of NGPA: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Dow-Moutz No. 1 69110-00
Field: N/A
County: Muskingum

Purchaser: National Gas & Oil Corp.
Volume: 6.517 MMcf.

The applications for determination in these proceedings together with a copy or descriptions of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.W., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15370 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978.

May 8, 1979.

On April 27, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Ohio, Department of Natural Resources
FERC Control Number: JD79-3369
API Well Number: 34 119 2 3117**14
Section: 108
Operator: Quaker State Oil Refining Corp.
Well Name: Fox #1 69123-00
Field: N/A
County: Muskingum
Purchaser: Natural Gas & Oil Corp.
Volume: 6.205 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 1, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-15371 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Uranium Enrichment Services; Criteria

The Department of Energy (DOE) hereby announces revisions to its uranium enrichment services criteria. The only substantive revision amends the second sentence of the revised subparagraph 4(c)(2) by changing the period at the end of that sentence to a comma and adding the following: "and natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services."

This substantive change will permit DOE to recover, in its charge for enrichment services, imputed interest on the cost of natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services.

In addition to the substantive revision, this notice revises earlier criteria by substituting "Department of Energy" or "DOE" where appropriate for Atomic Energy Commission, AEC, and Commission. This revision recognizes that the authority to provide uranium enrichment services, formerly held by the Atomic Energy Commission, has been transferred to DOE. This notice also changes the reference in subparagraph 1(d) from the "Joint Committee on Atomic Energy" to "committees of the Senate and House of Representatives which under the rules of the Senate and House have jurisdiction for" review. This change is made to conform the revision to the provisions of Public Law 95-110 which abolished the Joint Committee on Atomic Energy. These revisions are being made as an exercise of DOE's interpretive rulemaking authority.

The following notice concerning Uranium Enrichment Services Criteria previously published in the Federal Register is hereby superseded: 38 FR 12180, May 9, 1973, as amended in 39 FR 38016, October 25, 1974, and in 43 FR 27886, June 27, 1978.

1. *General.*—(a) The Department of Energy (DOE) hereby gives notice of the establishment of criteria setting forth the general terms and conditions applicable to the provision of uranium enrichment services in facilities owned by DOE, as authorized by the Atomic Energy Act of 1954, as amended (the Act). Specifically, these criteria are established pursuant to section 161v of the Act, which was added by Public Law 88-489, the "Private Ownership of Special Nuclear Materials Act." As used in this notice, the term "enrichment services" or "enriching services" means the separative work (note 1.) necessary to enrich or further enrich uranium in the isotope 235. The enrichment services will be provided pursuant to contracts to be entered into: (1) With persons licensed under section 53, 63, 103, or 104 of the Act; and/or (2) in accordance with agreements for cooperation arranged pursuant to section 123 of the Act. The DOE will not enter into such contracts in excess of the available capabilities of the DOE. Available capability consists of inventories of material available or committed to DOE and the physical capability of existing and authorized enriching plants, fully powered and operated without limitation as to mode of operation, but as reduced by potential commitments involving forecasts of Government needs.

Note 1.—The work devoted to separating a quantity of uranium (feed material) into two fractions, one a product fraction containing a higher concentration of U-235 than the feed and the other a tails fraction containing a lower concentration of U-235.

(b) The contracts will provide for the furnishing of depleted, normal, or enriched uranium by the customer and the delivery by DOE of an appropriate quantity of enriched or more highly enriched uranium. The quantity of material to be furnished by the customer in relationship to the quantity of enriched uranium to be delivered by DOE and the related amount of separative work to be performed by DOE normally will be determined in accordance with the then current standard table of enriching services published by DOE (note 2.). In the event, however, that enriching services other than that which would be available from the standard table of enriching services may be requested, DOE may agree to perform such services in accordance with such other table as is within its capability. The general features of contracts, including the basis for DOE's charges for enriching services, are set forth herein.

Note 2.—In its standard table of enriching services DOE will take into account any significant effect of the presence of other isotopes of uranium on the number of separative work units required to perform a given U-235, U-238 separation.

(c) Except as specifically provided, nothing in this notice shall be deemed to affect the sale or leasing of special nuclear material by the DOE or the entering into the "barter" arrangements whereby special nuclear material is distributed pursuant to section 54 of the Act and source material is accepted in part payment therefor.

(d) The criteria contained in this notice are subject to change by the DOE from time to time; however, any such changes shall be submitted to the Committees of the Senate and House of Representatives which under the rules of the Senate and House have jurisdiction for review in accordance with the Act.

2. *Period of contract.*—Contracts with domestic licensees will be for specified periods of time and provide for the furnishing of enrichment services for periods up to 30 years. Contracts entered into in accordance with an international agreement for cooperation must be for a term within the period of such agreement.

3. *Enrichment of Uranium of Foreign Origin.*—There is no restriction on the provision of enrichment services to persons furnishing as feed-material uranium of foreign origin where the enriched product is not intended to be used in a utilization facility (as defined in the Act) within or under the jurisidction of the United States. Where the enriched material is intended to be used in a domestic utilization facility, however, the fraction of feed material furnished by any customer during a year under all of the customer's enrichment agreements with the DOE that is feed material of foreign origin shall not exceed:

(a) 10 percent at any time during 1977;
(b) 15 percent at any time during 1978;
(c) 20 percent at any time during 1979;
(d) 30 percent at any time during 1980;
(e) 40 percent at any time during 1981;
(f) 60 percent at any time during 1982;
(g) 80 percent at any time during 1983;

Thereafter, there shall be no restriction on the furnishing of feed material of foreign origin for the provision of enrichment services.

4. *General features of domestic contracts.*—Domestic contracts have been developed in the light of the uncertainties necessarily attendant to long term contracts. Accordingly, such contracts will provide that, at the request of either the DOE or the customer, the parties will negotiate and, to the extent mutually agreed, amend them without additional consideration, in a manner consistent with the requirements of section 161v of the Act to eliminate or reduce restrictive provisions which the parties determine are inequitable, discriminatory or no longer required to protect their interests. Prior to adopting any changes in the provisions of its enriching contracts which would not require amendment of these criteria but which might have adverse effects upon the customer, DOE will make such proposed contract provisions widely available and solicit the views of its customers and other interested parties. DOE will give all comments so received careful review and take them into consideration in formulating the definitive implementation of such proposed changed provisions in future contracts. The primary contracting vehicle for the DOE to supply enriching services for nuclear power reactors on a long term basis shall be a Fixed Commitment Contract. This contracting arrangement shall employ, as basic principles, the concepts of (i) a period of advance contracting related to the period of time required to obtain new capacity to supply enriching services, (ii) a period of firm commitments by the customer for enriching services and (iii) advance payments by the customer related to the initial services under the contract. Contracts to be entered into with domestic licensees will define the amount of enriching services to be provided by the DOE in terms of units of separative work as related to the DOE's standard table of enriching services in effect at the time the parties agree to such amounts and provide for the adjustment of such amounts in the event of a revision of the DOE's standard table of enriching services through the application of such revised standard table to the relevant portion of a reference schedule of feed material deliveries by the customer and enriched uranium deliveries by the DOE incorporated into the contract for this purpose.

(a) *Delivery schedules.*—Deliveries of specific quantities and U-235 assays of feed material to DOE and enriched uranium to the customer shall be in accordance with the agreement between the parties and (except as provided in 1(b) above) in accordance with the published DOE standard table of enriching services in effect at the time of the delivery of enriched uranium by the DOE. The schedule for delivering enriched uranium to the customer shall reflect an interval after receipt of feed material equivalent to the estimated average time which would be required to receive, handle, and process equivalent feed material to the desired enriched uranium. The DOE will not necessarily use the specific feed material furnished by the customer in producing the enriched uranium delivered to the customer. Unless otherwise agreed, deliveries of feed material to DOE shall precede requested deliveries of the enriched uranium by at least 90 days. The DOE may agree to perform enriching services in cases where the leadtime requirements for furnishing feed material are not satisfied; in such cases, an appropriate surcharge may also be imposed to provide for recovery of additional DOE costs and interest charges.

(b) *Chemical form and specifications of material.*—Both feed material furnished to the DOE and enriched uranium delivered to the customer are required to be in the form of UF_6, and conform to the DOE's established specifications as published in the Federal Register and in effect on the date of delivery.

(c) *Charges for enriching services.*—(1) The charges for enriching services, in accordance with the Act, will be established on a nondiscriminatory basis and on a basis of recovery of the Government's costs over a reasonable period of time. Applicable charges for enriching services and related services will be those in effect at the time of delivery of enriched uranium to the customer as (i) published in the Federal Register, or (ii) in the absence of such publication, determined in accordance with the DOE's pricing policy. The DOE may impose an appropriate surcharge representing additional costs, if any, to the DOE for providing enriching services on short notice.

(2) DOE's charges for enriching services will be established on a basis that will assure the recovery of appropriate Government costs projected over a reasonable period of time. The cost of separative work includes electric power and all other costs, direct and indirect, of operating the enrichment plants; appropriate depreciation of said plants; and a factor to cover applicable costs of process development, DOE administration and other Government support functions, and imputed interest on investment in plant, working capital, and natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services. During the early period of growth of nuclear power, there will be only a small civilian demand on the large DOE enrichment plants. These plants were originally constructed for national security purposes, but will be utilized in meeting future civilian requirements. In this interim period of low plant utilization, the DOE has determined that the costs to be charged to the separative work produced for civilian customers will exclude those portions of the costs attributable to

depreciation and interest on plant investment which are properly allocable to plant in standby and to excess capacity.

(3) Projections of supply and demand over a reasonable time period will be used in establishing a plan for enrichment plant operations. This plan will be the basis for establishing average charges for separative work over the period involved, which charges will be kept as stable as possible as operating plans are periodically updated. Under such operating plans, DOE will at times be preproducing enriched uranium. Interest on the separative work costs of any such preproduced inventories will be factored into the averaged separative work charges.

(d) *Customer's option to acquire tails material.*—The customer shall be granted an option to acquire tails material (depleted uranium) resulting from the performance of enriching services. The option as to quantity (kg U) of tails material desired by the customer, within the maximum quantity subject to the option, must be exercised at the time of delivery of the related quantity of feed material. The U-235 assay of the tails material delivered to the customer will be within the sole discretion of the DOE. The maximum quantity of depleted uranium subject to the option will be equal to the difference between the total uranium supplied by the customer as feed material and the total enriched uranium furnished to the customer, less processing losses as established from time to time by the DOE. No charge will be made for tails material delivered to the customer under the agreement other than DOE's withdrawal, handling and packaging charges. Delivery of tails material will normally be at the same time as delivery of enriched uranium.

(e) *Responsibility for material meeting specifications.*—The customer warrants that all feed material meets specifications and, with stated exceptions agrees to hold the DOE and its representatives harmless from all damages, liabilities, or costs arising out of a breach of the warranty where such damages, liabilities, or costs are incurred prior to final acceptance of the feed material by DOE. However, the customer is not deprived of any rights under indemnification agreements entered into pursuant to section 170 of the Act (Price-Anderson indemnification). The DOE's obligation to furnish specification material to the customer terminates upon final acceptance of such material by the customer.

(f) *Termination by DOE.*—(1) The contract may be terminated by DOE without cost to DOE upon reasonable notice at such time as commercial enriching services are provided by another domestic source: *Provided, however,* That DOE will upon request by the customer rescind any notice of termination and will continue to furnish the services specified in the contract if the services of the domestic source are not available to the customer: (i) To the extent provided for in the DOE contract during the remainder of its term; and (ii) on terms and conditions, including charges, which are considered by the DOE to be reasonable and nondiscriminatory.

Note 3.—In determining whether terms and conditions, including charges for different customers appear to be nondiscriminatory, the DOE will not consider differences in such matters to be discriminatory if they are reasonably based upon different risks and costs presented by customers to domestic enrichment services.

(2) The DOE may terminate the contract without cost to the DOE in the event the customer loses its right to possess enriched uranium, defaults on its contractual obligations, or becomes involved in bankruptcy proceedings. In such instances the customer will be required to pay a termination charge determined as if the customer had terminated the contract on the notice, if any, given the customer by the DOE.

(g) *Termination by customer.*—The customer may terminate the contract in whole or in part. In such instances the customer will be required to pay a termination charge for those enriching services which would have been furnished but for such termination. Termination charges per kg unit of separative work will be established on a basis of recovery of the costs which the DOE estimates may arise from terminations by customers. Applicable charges for termination will be those in effect at the time of receipt of notice of termination as published in the Federal Register. From time to time the DOE may, at its discretion, review the estimated costs to the DOE which may arise from terminations by customers. If the DOE determines on the basis of such review that the estimated costs are significantly less than the termination charges published in the Federal Register, the DOE will make an appropriate reduction in such charges prospectively. Such reduced charges will remain in effect until increased or reduced by a subsequent review and determination (based upon significant changes in the estimated costs as compared with the termination charges then in effect). Any revised charges so determined shall be final for all purposes except as they may be changed by subsequent determinations made in accordance herewith. In any event, termination charges established by the DOE for prospective application as provided above shall not exceed the related charge for enriching services as reduced by the portion of such charge representing (i) the cost to the DOE of the average energy charge for electric power used in the provision of enriching services or (ii) the costs to the DOE of the average demand and energy charges for such electric power, as determined by the DOE to be appropriate based on the period of notice of termination given by customers. Upon the request of the customer prior to its delivery of a notice of termination, the DOE will advise the customer of the approximate amount of termination charges which would be payable.

(h) *Delivery—Title.*—The f.o.b. delivery point for both feed material furnished to DOE and enriched uranium delivered to the customer is the designated DOE facility. The DOE's enriching facilities are situated at Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio. Title to all material passes upon delivery.

(i) *Changes in specifications and charges.*—Any change made in the specification of UF_6 or in the DOE's standard table of enriching services shall require at least 180 days' notice for the former, and 540 days' notice for the latter, to the customer by publication in the Federal Register. Any increase in the charges per unit of separative work for enriching services shall require at least 60 days' notice to the customer by publication in the Federal Register.

5. *General features of contracts entered into in accordance with an agreement for cooperation.*—It is expected that the general features of uranium enrichment services contracts entered into pursuant to agreements for cooperation with foreign nations or groups of nations will be generally consistent with those discussed above.

6. *Correspondence.*—Any correspondence involving this notice or request for copies of contract forms should be addressed to: Manager, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box B, Oak Ridge, Tennessee 37830.

Effective date: May 17, 1979.

Dated at Washington, D.C., this 11th day of May 1979.

George S. McIsaac,

Assistant Secretary, Resource Applications.

[FR Doc. 79-15436 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sales:

S-JA-256—Sale to the Power Reactor and Nuclear Fuel Development Co., Japan of 1,300 milligrams of plutonium enriched to greater than 90% in Pu-242, to be used for burn-up measurements of irradiated fuels by isotope dilution mass spectrometry.

S-JA-257—Sale to the Power Reactor and Nuclear Fuel Development Co., Japan of 1,000 milligrams of uranium enriched to 99.5% in U-233, to be used for burn-up measurements of irradiated fuels by isotope dilution mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than June 1, 1979.

Dated: May 11, 1979.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Program.

[FR Doc. 79-15375 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Governments of Norway and Sweden.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfers:

RTD/SW(EU)-103, from France to Sweden, 15.054 kilograms of uranium, containing 14.000 kilograms of U-235 (93.0%) to be used as fuel elements in the R-2 research reactor.

RTD/SW(NO)-15 from Norway to Sweden, 20 irradiated test fuel rods, containing 7,840 grams uranium, 682.4 grams of U-235, and 29.4 grams of plutonium, for post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than June 1, 1979.

Dated: May 11, 1979.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-15376 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreements for Cooperation Between the Government of the United States of America and the Governments of Japan and Sweden.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer RTD/SW (JA)-2 Retransfer from Japan to Sweden of 2,426.500 kilograms Uranium, containing 53.408 kilograms U-235, to be used for working stock at the Asea-Atom fuel fabrication facility.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than June 1, 1979.

Dated: May 11, 1979.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-15377 Filed 5-16-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

National Institutes of Health

Conference on the Management and Logistics of Blood Banking

Notice is hereby given of the 1979 Conference on the Management and Logistics of Blood Banking sponsored by the National Heart, Lung, and Blood Institute and American Blood Commission—Thursday and Friday, June 21 and 22, 1979, at the Don CeSar Beach Resort Hotel, St. Petersburg, Florida.

This meeting will be open to the public on June 21, 1979 from 12:00 noon to adjournment, and on June 22, 1979 from 8:00 a.m. to adjournment.

The purpose of the meeting is to focus on the diversity of functions associated with blood banking and transfusion therapy and to discuss the problem of blood wastage. Attendance by the public will be limited to space available.

Dr. Robert Huitt, Program Coordinator, Blood Resources and Transplatation Branch, NHLBI, NIH, Federal Building, Room 5A08, Bethesda, Maryland 20205, (301) 496-1537 will provide additional information.

Dated: May 11, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-15323 Filed 5-16-79; 8:45 am]
BILLING CODE 4110-08-M

Meeting of Board of Scientific Counselors, NIEHS

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, May 30, 31, and June 1, 1979, Building 18 Conference Room, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

This meeting will be open to the public from 9 a.m. to 4 p.m. on May 30 and 31, for the purpose of discussing recent developments in the Institute's budget, personnel, permanent facilities, contracts, scientific programs, and plans of the Laboratory of Pulmonary Function and Toxicology, and the Laboratory of Biochemical Genetics. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6) Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9 a.m. to adjournment on June 1 for the evaluation of the program of the Laboratory of Pulmonary Function and Toxicology, and the Laboratory of Biochemical Genetics, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Acting Executive Secretary, Dr. David G. Hoel, Acting Scientific Director, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina 27709, telephone (919) 541–3205, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: May 11, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–15320 Filed 5–16–79; 8:45 am]

BILLING CODE 4110–08–M

Meeting of Clinical Trials Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, on June 13–15, 1979, at the Holiday Inn of Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland (Franklin Room), at 8:00 p.m. on June 13, 1979; and reconvening on June 14–15, in the Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland (Conference Room 7A–12), at 8:30 a.m. both days.

This meeting will be open to the public from 8:00 p.m. to 8:30 p.m. on June 13, 1979, to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 13, 1979, from 8:30 p.m. to adjournment; and on June 14 and 15, 1979, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, National Institutes of Health, Building 31, Room 5A–03, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members. Dr. Fred P. Heydrick, Chief, Research Contracts Review Section, Division of Extramural Affairs, NHLBI, Westwood Building, Room 548B, phone (301) 496–7363, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, National Institutes of Health)

Dated: May 7, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–15321 Filed 5–16–79; 8:45 am]

BILLING CODE 4110–08–M

Meeting of Diagnostic Research Advisory Group

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Diagnostic Research Advisory Group, National Cancer Institute, June 27, 1979, Westwood Building, Conference Room D, 5333 Westbard Avenue, Bethesda, Maryland 20016.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss general business related to the cancer diagnosis research program. Attendance by the public will be limited to space available.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Louis P. Greenberg, Executive Secretary, National Cancer Institute, Building 31, Room 3A10, National Institutes of Health, Bethesda, Maryland 20205 (301/496–1591) will furnish substantive program information.

Dated: May 4, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–15324 Filed 5–16–79; 8:45 am]

BILLING CODE 4110–08–M

Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, June 29–30, 1979, Patio Room, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland. This meeting will be open to the public on June 30, 1979, from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 29, 1979 from 8:30 AM until 7:00 PM and from 9:30 AM June 30, 1979 until the adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Room 5A03, Building 31, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members. Dr. Arthur Merrick, Executive Secretary, NHLBI, NIH, Room 552, Westwood Building, Bethesda, Maryland 20205, phone (301) 496–7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, 13.838, 13.839, National Institutes of Health)

Dated: May 7, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH

[FR Doc. 79–15326 Filed 5–16–79; 8:45 am]

BILLING CODE 4110–08–M

Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, June 29–30, 1979, Patio Room, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland

This meeting will be open to the public on June 30, 1979, from 8:30 a.m. to approximately 9:30 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 29, 1979, from 7:30 p.m. until 11:00 p.m. and from 9:30 a.m., June 30, 1979, until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Room 5A03, Building 31, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Arthur W. Merrick, NHLBI, NIH, Room 552, Westwood Building, Bethesda, Maryland 20205, phone (301) 496-7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, 13.838, 13.839, National Institutes of Health)

Dated: May 7, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-15325 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-08-M

Minority Access to Research Careers Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, on June 21 and 22, 1979, 9:00 a.m., National Institute of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland, NIGMS Conference Room 9A12.

This meeting will be open to the public on June 21, 9:00 a.m., to 12:00 noon. The meeting will consist of opening remarks and discussion of procedural matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(6), the meeting will be closed to the public on June 21 from 1:30 p.m. to 5:00 p.m. and on June 22 from 9:00 a.m. until adjournment, for the review, discussion, and evaluation of individual and institutional grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Paul Deming, Public Information Officer, NIGMS, Westwood Building, Room 9A05, 5333 Westbard Avenue, Bethesda, Maryland 20205, telephone (301) 496-7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. Prince Rivers, Executive Secretary, Westwood Building, Room 950, Bethesda, Maryland 20205, telephone (301) 496-7125.

(Catalog of Federal Domestic Assistance Program 13.880, General Medical Sciences)

Dated: May 11, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79-15322 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Educational Information Centers Program; Closing Date for Transmittal of State Plans for Fiscal Year 1979

State plans and State plan amendments are being accepted for awards under the Educational Information Centers program.

Authority for this program is contained in Title IV, Part A, Subpart 5 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d-2—1070d-3)

This program is authorized to make grants to States to pay the Federal share (66⅔%) of the cost of planning, establishing, and operating Educational Information Centers to provide educational information, guidance, counseling, and referral services for all individuals, including individuals residing in rural areas.

Closing Date for Transmittal of State Plans or Amendments

State plans or amendments must be mailed or hand delivered by July 23, 1979.

State Plans or Amendments Delivered by Mail

A State plan or amendment sent by mail must be addressed to the Community Service and Continuing Education Branch, Division of Training and Facilities, Bureau of Higher and Continuing Education, *Attention 13.585*, Room 3066, ROB-3, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Proof of mailing may consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted unless they have been date stamped by the U.S. Postal Service. (NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.) Applicants are encouraged to use first class and/or registered mail.

Each late applicant will be notified that its application will not be considered in the current competition.

State Plans or Amendments Delivered by Hand

A State plan or amendment, must be taken to the U.S. Office of Education, Community Service and Continuing Education Branch, Division of Training and Facilities, Bureau of Higher and Continuing Education, Room 3066, ROB-3, 7th and D Streets, SW., Washington, D.C.

This office will accept hand-delivered plans and amendments between 8:00 a.m. and 4:00 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, or Federal holidays.

Plans and amendments will not be accepted after 4:00 p.m. on the closing date.

Available Funds

The Educational Information Centers has an appropriation of $3,000,000 for fiscal year 1979. The amount allocated to each State that has submitted an approved plan, will bear the same ratio to the appropriation, as the population of that State bears to the total population of all States submitting an approved State plan. No State submitting an approved plan shall receive less than $50,000.

State Plan Forms

Forms and program information packages are expected to be ready for mailing by May 15, 1979. The necessary forms and information packages will be mailed to the State agencies/institutions which have been designated by the Governor as being responsible for submitting the State's Educational Information Center Plan.

State plans and amendments must be prepared and submitted in accordance with the regulations, funding instructions, and forms included in the program information packages.

Special Procedures

OMB Circular No. A-95 requires that prior to the submission to the Commissioner of any State plan, State application, or of any amendment, the State agency shall afford the Governor of the State an opportunity to comment on the relationship of the State plan, application, or amendment to comprehensive and other State plans and programs. The State agency shall afford the Governor a period of not fewer than 45 days in which to comment and shall attach those comments—or, if the Governor makes no comments, a statement to that effect—to the plan, application, or amendment when it is submitted to the Commissioner.

Applicable Regulations

The regulations applicable to this program are:

(a) Office of Education General Provisions Regulations (45 CFR Part 100b), and

(b) Regulations governing the Educational Information Centers Program (45 CFR Part 137).

For Further Information Contact

Community Service and Continuing Education Branch, Division of Training Facilities, Bureau of Higher and Continuing Education, U.S. Office of Education, 7th and D Streets, SW., Room 3066, Regional Office Building 3, Washington, D.C. 20202. Telephone (202) 245-2671.

(20 U.S.C. 1070d-2—1070d-3)

(Catalog of Federal Domestic Assistance Number 13.585; Educational Information Centers)

Dated: May 11, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

[FR Doc. 79-15307 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-02-M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: Office of Education, National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Executive, Federal Policy, Practices and Programs, Civil Rights, WEEA Program Committees; and the NACVE/NACWEP Joint Task Force on Sex Equity. It also describes the functions of the Council. Notice of the meeting is required pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 920463). This document is intended to notify the general public of their opportunity to attend.

DATE: June 5, 1979, 7:30 p.m. to 10:00 p.m; June 6–June 7, 8:30 a.m. to 5:00 p.m.; June 8, 1979, 8:30 a.m. to 12:00 noon.

ADDRESS: The Radisson Hotel, 45 So. 7th Street, Minneapolis, Minnesota, 55402.

FOR FURTHER INFORMATION CONTACT: Laura R. Summers, National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., #821, Washington, D.C., 20036, (202) 653-5846.

The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to (a) advise the Secretary, Assistant Secretary, and the Commissioner on matters relating to equal education opportunities for women and policy matters relating to the administraton of the Women's Educational Equity act of 1978; (b) make recommendations to the Commissioner with respect to the allocation of any funds pursuant to that Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on June 5, 1979 from 7:00 p.m. to 10:00 p.m. The agenda will include plans for the Council meeting as well as discussion of current activities and future plans.

The meeting of the Federal Policy, Practices and Programs Committee, the Civil Rights Committee, and the WEEA Program Committee will take place on June 6, 1979 form 8:30 a.m. to 12:30 p.m. The meeting of the NACVE/NACWEP Joint Task Force on Sex Equity will take place on June 6, 1979 from 12:30 p.m. to 2:00 p.m.

The agenda for the Federal Policy, Practices, and Programs Committee will include discussion of urban education legislation, and the Reauthorization of the Higher Education Act.

The agenda for the Civil rights Committee will include discussion of matters concerning Title IX of the Education Amendments of 1972 and Title IV of the 1964 Civil rights act.

The agenda for the WEEA Program Committee will include discussion of the new proposed WEEA regulations, WEEA contract activities, and an update on WEEA evaluation activities for FY 78.

The agenda for the NACVE/NACWEP Joint Task Force on Sex Equity will include discussion of sex equity in vocational education.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 2:00 p.m. to 5:00 p.m. June 6; from 8:30 a.m. to 12:00 p.m. on June 7; and from 8:30 a.m. to 12:00 p.m. on June 8, 1979. The agenda will include reports of the Executive Director and the Women's Program Staff and recommendations of standing Committees. A public hearing on Title IX Intercollegiate Athletics will be held from 1:30 p.m. to 5:00 p.m. June 7. Records will be kept of the proceedings and will be available for public inspection at the Council offices at 1832 M Street, N.W., Suite 821, Washington, D.C.

Signed at Washington, D.C. on May 14, 1979.

Joy R. Simonson,

Executive Director.

[FR Doc. 79-15453 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-02-M

Office of Secretary

1979 Contribution and Benefit Base Under Pre-1977 Amendment Law; Determination

AGENCY: Social Security Administration.

ACTION: Notice of Determination of the "Old-Law" Social Security Contribution and Benefit Base.

SUMMARY: The Social Security Amendments of 1977 set the contribution and benefit base at $22,900 for 1979, $25,900 for 1980 and $29,700 for 1981. After 1981, the base will increase as average wage levels rise. The contribution and benefit base is the maximum annual amount of earnings that is subject to social security taxes and is creditable toward social security benefits. The 1977 amendments also provide for separate annual determinations of the contribution and benefit base that would have been in effect under old law (pre-1977-law). This "old-law" base is used only for certain purposes under the railroad retirement program and the Employee Retirement Income Security Act of 1974 (ERISA) and for computing special minimum social security benefits for workers with many years of low earnings. This notice specifies that the amount for 1979 under pre-1977 law is $18,900.

FOR FURTHER INFORMATION CONTACT: Harry Ballantyne, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-2466.

SUPPLEMENTARY INFORMATION: The Social Security Amendments of 1977 (Pub. L. 95-216) changed the contribution and benefit base, which is the maximum annual amount of earnings on which social security taxes are paid and a person's social security benefits are figured. Section 230(c) of the Social Security Act specifies that the amount of this contribution and benefit base is $22,900 for 1979. We published this information in the Federal Register on November 16, 1978 (43 FR 53504).

"Old-Law" Contribution and Benefit Base

The "old-law" contribution and benefit base is the base that would have been effective in each year after 1978 under the Social Security Act before the enactment of the 1977 amendments. This "old-law" base is used:

(1) For certain purposes under the railroad retirement program and the Employee Retirement Income Security Act of 1974 (ERISA); and

(2) To compute special minimum social security benefits for certain workers with many years of low earnings.

The base is computed under section 230 of the Social Security Act as it read prior to the 1977 amendments.

Computation

Under section 230 of the Social Security Act as in effect before the 1977 amendments, we would determine the contribution and beneift base for 1979 by multiplying the 1978 base by the ratio of average taxable wages reported for the first quarter of 1977 to average taxable wages reported for the first quarter of 1976. We previously determined this ratio to be 1.0599318 (43 FR 53504, November 16, 1978). Multiplication of the 1978 contribution and benefit base of $17,700 by the above ratio results in the amount of $18,760.79, which must be rounded to the nearest multiple of $300. Therefore, we determine the "old-law" base for 1979 to be $18,900.

Railroad Retirement Uses

The railroad retirement program will use the $18,900 base to determine:

(1) Employer tax liability under section 3221(a) of the Internal Revenue Code of 1954;

(2) The portion of the employee representative tax liability under section 3211(a) of the Internal Revenue Code of 1954 which results from the application of the 9.5 percent rate specified to that section and

(3) Average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974, but not annuity amounts determined under sections 3(a) or 3(f)(3) of that fact.

These uses are stated in section 230(c) of the Social Security Act.

Employee Retirement Income Security Act (ERISA) Use Under section 230(d) of the Social Security Act, ERISA will use the 1979 "old-law" base of $18,900 to determine the maximum pension benefit guaranteed by the Pension Benefit Guaranty Corporation for pension beneift plans terminating in 1979.

Social Security Use

Special minimum social security benefits are payable to workers with many years of low earnings. If in 1979, a worker's earnings amount to at least 25 percent of the "old-law" base of $18,900, we will credit the worker with a "year of coverage" for 1979. Years of coverage are used to compute the special minimum benefit payable under section 215(a) of the Social Security Act.

(Catalog of Federal Domestic Assistance Program Nos. 13.803, Social Security-Retirement Insurance; 57.001. Social Security Insurance for Railroad Workers)

Dated: May 10, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

[FR Doc. 79-15452 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-07-M

Office of the Secretary

National Advisory Committee on the White House Conference on Families; Establishment

The Secretary of Health, Education, and Welfare has determined the establishment of the National Advisory Committee on the White House Conference on Families, as identified below, to be in the public interest, and necessary and appropriate to provide advice to him, the White House Conference Chairperson and staff concerning Conference activities. The Advisory Committee is established in accordance with and will be governed by the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I.

1. *Designation.* National Advisory Committee on the White House Conference on Families.

2. *Establishment date and date of termination.* The Committee was established May 15, 1979 and will terminate not later than six months after adjournment of the White House Conference.

3. *Purpose.* The Committee will advise the Secretary, the White House Conference Chairperson and staff on such matters pertaining to the Conference (including the development, implementation and execution of the overall plans and procedures for the Conference) as the Secretary or the Conference Chairperson may request.

4. *Membership.* The Committee will be composed of forty-one members, having the broadest possible range of interests, perspectives, knowledge, and expertise. It will have subcommittee authority to allow for simultaneous consideration of the many facets of Conference activities.

5. *Meetings.* Notice of all meetings will be given to the public as required by the Federal Advisory Committee Act.

For further information, please call the White House Conference on Families (202) 245-6073.

Laura A. Miller,

Special Assistant to the Secretary.

[FR Doc. 79-15642 Filed 5-16-79; 10:10 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Sisseton-Wahpeton Sioux, Plan for the Use and Distribution of Sisseton-Wahpeton Sioux Judgment Funds Awarded in Docket 363 Before the Indian Claims Commission

May 9, 1979.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment to any Indian tribe. Funds were appropriated by the Act of March 7, 1978, 92 Stat. 107, in satisfaction of the award granted to the Sisseton-Wahpeton Sioux Indians in Indian Claims commission docket 363. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated January 9, 1979, and was received (as recorded in the Congressional Record) by the Senate and the House of Representatives on January 15, 1979. Congress not having adopted a resolution disapproving it, the plan became effective on March 26, 1979, as provided by Section 5 of the 1973 Act, *supra.*

The plan reads as follows:

"The funds appropriated by the Act of March 7, 1978, 92 Stat. 107, in satisfaction of a judgment awarded to the Sisseton-Wahpeton Sioux Indians in docket 363, Second Claim (1867 Treaty and 1872 Agreement), and the funds appropriated by the same statute in satisfaction of an additional award in the same docket, shall be used and distributed as provided herein.

The funds, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter 'Secretary') on the basis of 73.79 percent to the Sisseton-Wahpeton Sioux Tribe of South Dakota and 26.21 percent to the Devils Lake Sioux Tribe of North Dakota.

Sisseton-Wahpeton Share

The share of the Sisseton-Wahpeton Sioux Tribe of South Dakota shall be used and distributed as follows:

Per Capita Payment Aspect

The Sisseton-Wahpeton Sioux Tribe's latest approved membership roll shall be brought current, pursuant to the tribe's Revised Constitution and Bylaws, to the effective date of this plan.

Eighty (80) percent of the share shall be distributed in the form of per capita payments, in a sum as equal as possible, to all tribal members born on or prior to and living on the effective date of this plan.

Programing Aspect

All programing portions cited below shall be invested by the Secretary and such funds, including all interest and investment income accrued, shall be utilized on an annual budgetary basis, subject to the approval of the Secretary, for the programs or projects specified.

A. Retirement of FmHA Land Acquisition Loans

Fourteen (14) percent of the share, and any amounts remaining after the per capita payment provided above, shall be utilized for the repayment of the tribe's first two Farmers Home Administration land acquisition loans.

B. Land Acquisition Program

Four (4) percent of the share shall be utilized for the purchase of land pursuant to the tribe's land acquisition program.

C. Land Development Program.

Two (2) percent of the share shall be utilized for the development and improvement of tribal land holdings.

Devils Lake Share

The share of the Devils Lake Sioux Tribe of North Dakota shall be used and distributed as follows:

Per Capita Payment Aspect

The Devils Lake Sioux Tribe's latest approved membership roll shall be brought current, pursuant to the tribe's Constitution and Bylaws, to the effective date of this plan.

Eighty (80) percent of the share shall be distributed in the form of per capita payments, in a sum as equal as possible, to all tribal members born on or prior to and living on the effective date of this plan.

Programing Aspect

All programing portions cited below shall be invested by the Secretary and such funds, including all interest and investment income accrued, shall be utilized on an annual budgetary basis, subject to the approval of the Secretary, for the programs or projects specified.

A. Land Acquisition Program

Ten (10) percent of the share, and any amounts remaining after the per capita payment provided above, shall be utilized for the purchase of land pursuant to the tribe's land acquisition program.

B. Social and Economic Programs

Seven (7) percent of the share shall be utilized for the following programs:

Elderly Members Activities Fund
Higher and Vocational Education
Wake Fund
Health Care
Small Business Loans
Credit Union
Road Construction and Maintenance
Tribal Business Operations
Miscellaneous Fund

C. Attorney Fees and Litigation Expenses

Three (3) percent of the share shall be utilized for any attorney fees and litigation expenses which may be incurred by the tribal governing body.

General Provisions

The per capita shares of living competent adults shall be paid directly to them. The shares of deceased individual beneficiaries shall be handled pursuant to 43 CFR, Part 4, Subpart D. The shares of legal incompetents shall be handled pursuant to 25 CFR 104.5. The shares of minors shall be handled pursuant to 25 CFR 60.10(a) and (b)(1) and 104.4.

Adults who are determined by the tribal governing body and the Agency Superintendent to be in arrears in debts owed to the tribe shall have their shares placed in Individual Indian Money (IIM) accounts; and the Agency Superintendent shall have the authority to apply all or part of such shares to the payment of delinquent debts.

Should any funds in any general programming categories be found in excess of any such programming goals, such funds may be transferred, with the approval of the Secretary, to another programming category.

Lineal descendants of Sisseton-Wahpeton Sioux Indians who are not enrolled with the Devils Lake Sioux Tribe or the Sisseton-Wahpeton Sioux Tribe are not eligible to participate in any aspect of this plan.

None of the funds distributed per capita or made available under the programming aspects of this plan shall be subject to Federal or State income taxes or be considered income or resources in determining eligibility for assistance under Federal, State or local programs.

Martin E. Seneca, Jr.,
Acting Assistant Secretary, Indian Affairs.

[FR Doc. 79-15394 Filed 5-16-79; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[F-20520]

Alaska Native Claims Selection

Correction

In FR Doc. 79-13268, published at page 25271, on Monday, April 30, 1979, in the middle column on page 25272, in the land description, the line reading "U.S. Survey 4340, U.S. Survey 4327;" should be corrected to read "U.S. Survey 4340, U.S. Survey 4237;".

BILLING CODE 1505-01-M

[AA-8103-3]

Alaska Native Claims Section

Correction

In FR Doc. 79-13857, published at page 25944, on Thursday, May 3, 1979, on page 25945, in the first column, in the second paragraph reading "T.33 N., R.35W.", the fourth line reading "Secs. 30 to 33," should be corrected to read "Secs. 30 and 33,".

BILLING CODE 1505-01-M

Bureau of Land Management

[AA-8104-1]

Alaska Native Claims Selection

On January 17, 1969, Public Land Order 4582 was signed, withdrawing all unreserved public lands in Alaska from, inter alia, selections under the Statehood Act (72 Stat. 339, 48 U.S.C. Ch. 2; (1970)). Paragraph 4 of this order provided that between December 13, 1968 and January 4, 1969, only lands within "leases, licenses, permits, or contracts issued pursuant to the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 818, et seq.), or the Alaska Coal Leasing Act of 1914 (38 Stat. 741, as amended, 48 U.S.C. 432)" could be included in selections under the Statehood Act.

On January 3, 1969, the State of Alaska filed State selection application AA-5447 for all of T. 6 N., R. 2 W., Copper River Meridian. At the time the selection was filed, only Secs. 11 through 16 of this township were embraced in mineral leases. Under the provisions of PLO 4582, the remaining 30 sections of T. 6 N., R. 2 W., Copper River Meridian were unavailable for State selection. For this reason, State selection application AA-5447 must be and is hereby rejected as to the following described lands:

Copper River Meridian, Alaska

That portion described as:

T. 6 N., R. 2 W.,
Secs. 1 to 10, inclusive, all;
Secs. 17 to 36, inclusive, all.

Containing approximately 19,100.88 acres.

On July 24, 1974, AHTNA, Inc. filed selection application AA-8104-1 under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(c) (Supp. V, 1975)) (ANCSA), for the surface and subsurface estates of certain lands withdrawn pursuant to Sec. 11(a)(1) for villages in the AHTNA region.

As to the lands described below, the application, as amended, submitted by AHTNA, Inc., is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands selected pursuant to Sec. 12(c) of ANCSA, aggregating approximately 10,240 acres, are considered proper for acquisition by AHTNA, Inc. and are hereby approved for conveyance pursuant to Sec. 14(e) of the Alaska Native Claims Settlement Act:

Copper River Meridian, Alaska

That portion described as:

T. 6 N., R. 2 W.,
Secs. 1, 2 and 10, all;
Secs. 20 to 28, inclusive, all;
Secs. 30 to 36, inclusive, all.

Containing approximately 10,240 acres.

The grant of the above described land shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands.

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way or easement and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

3. A right-of-way, serial number AA-9906, for a transmission line granted to the Copper Valley Electric Association under the act of March 4, 1911 (36 Stat. 1253, as amended; 43 U.S.C. 961 (1970)); as to E½E½ Sec. 1, E½E½ Sec. 24, E½E½ Sec. 25 and E½E½ Sec. 36, T. 6 N., R. 2 W., Copper River Meridian.

4. Those rights for pipeline purposes as have been granted to Amerada Hess Corporation, ARCO Pipe Line Company, Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipe Line Company, and Union Alaska Pipeline Company, their successors and assigns, in the Agreement and Grant dated January 23, 1974, as modified April 27, 1979, granted pursuant to Sec. 28 of the Mineral Leasing Act, 30 U.S.C. 185, as amended, 87 Stat. 576, November 16, 1973, serial No. AA-5847, and its related facilities more specifically identified as follows:

1. As to E½E½ Sec. 1, E½E½ Sec. 24, E½E½ Sec. 25, E½E½ Sec. 36, T. 6 N., R. 2 W., Copper River Meridian, oil pipeline right-of-way AA-5847;

2. As to NE¼NE¼ Sec. 36, T. 6 N., R. 2 W., Copper River Meridian, communication site AA-8502, and valve site AA-8622.

5. Temporary use permit AA-9608, granted to the owners of the trans-Alaska pipeline pursuant to Sec. 28 of the Mineral Leasing Act, 30 U.S.C. 185, as amended, 87 Stat. 576, on November 16, 1973; as to SE¼SE¼ Sec. 24, NE¼NE¼ Sec. 25, T. 6 N., R. 2 W., Copper River Meridian.

6. Access road right-of-way AA-9189, granted to Alyeska Pipeline Service Company pursuant to Sec. 28 of the Mineral Leasing Act, 30 U.S.C. 185, as amended, 87 Stat. 576, on November 16, 1973; as to NE¼NE¼ Sec. 25, T. 6 N., R. 2 W., Copper River Meridian.

7. Access road right-of-way AA-8864, granted to Alyeska Pipeline Service Company pursuant to Sec. 28 of the Mineral Leasing Act, 30 U.S.C. 185, as amended, 87 Stat. 576, on November 16, 1973; as to NE¼NE¼ Sec. 36, T. 6 N., R. 2 W., Copper River Meridian.

8. Those rights for pipeline purposes as have been issued to the owners of the Trans-Alaska Pipeline their successors and assigns, pursuant to Sec. 28 of the Mineral Leasing Act (30 U.S.C. 185) as amended November 16, 1973, (87 Stat. 576), for construction zone permit AA-9149.

There are no easements reserved pursuant to Sec. 17(b) of ANCSA on the above described lands.

AHTNA, Inc. is entitled to a minimum of 979,076 acres of land selected pursuant to Sec. 12(c) of the Alaska Native Claims Settlement Act. Together with the lands herein approved, the total amount of lands conveyed or approved for conveyance is 10,240 acres. The remainder of the entitlement of approximately 968,836 acres will be conveyed at a later date.

There are no inland water bodies considered to be navigable within the lands described.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks in the Anchorage Times and the Tundra Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until June 18, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

AHTNA, Inc., Drawer G, Copper Center, Alaska 99573.

State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-15414 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Paria Canyon, Paiute, and Vermillion Cliffs Wilderness Study; Public Meeting

The Department of the Interior, Bureau of Land Management, will hold public meetings for the purpose of receiving public comment on the proposal and alternatives to designating the primitive and natural areas in the Arizona Strip as wilderness areas. The public input from these meetings will be used to determine the scope and the significant issues to be analyzed in depth in the environmental impact statement. Also the imput will be used to identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review, thus narrowing the discussion of these issues in the statement.

The locations and times of the meetings are as follows:

Phoenix, Arizona, June 6th, 8:00 PM MST, Central Plaza Inn, 4321 N. Central.

Flagstaff, Arizona, June 7th, 8:00 PM MST, Coconino County Health Department Auditorium, 2500 N. Fort Valley Road.

Page, Arizona, June 11th, 8:00 PM MST, The Townhouse 605 S. Navajo.

St. George, Utah, June 12th, 8:00 PM MDT, Four Seasons Motor Inn, 747 East St. George Blvd.

Dated: May 10, 1979.

E. F. Spang,

Acting State Director, Arizona.

[FR Doc. 79-15395 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-84-M

Cedar City District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Wednesday, June 27, 1979.

The meeting will begin at 9:30 a.m. at the Bureau of Land Management Escalante Area Office, Escalante, Utah.

The agenda for the meeting will include: (1) Advisory Board charter and elections; (2) range betterment projects for the Kanab-Escalante Environmental Statement area; (3) advisory board funds for range betterment projects; (4) proposed allotment management plan grazing systems allotment consolidations, and grazing capacities; (5) a range tour of the Alvey Wash Grazing Allotment; (6) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements ot the board between 9:30 and 10:00 a.m., or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1579 North Main Street, Cedar City, Utah 84720, by May 25, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Persons desiring to make the tour should furnish their own transportation and lunch.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Morgan S. Jensen,

District Manager.

May 7, 1979.

[FR Doc. 79-15402 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-84-M]

Craig District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Craig District Advisory Board will be held on June 14 and 15, 1979. The meeting will begin at 10:00 a.m. at the Fairfield Center, 286 Main Street, Meeker, Colorado.

The agenda for the meeting on June 14, 1979, will include: (1) expenditure of range betterment funds, (2) expenditure of advisory board funds for range improvements, (3) current status of the White River Environmental Statement effort, (4) current situation on halogeton invasions, and (5) arrangements for the next meeting. The meeting is open to the public. Interested persons may make oral statements to the board between 11:00 a.m. and 12:00 noon on June 14, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by June 7, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

The remainder of the meeting to be held on June 15, 1979, will consist of a tour of several allotments directly involved in the White River Grazing Environmental Statement, White River Resource Area. The tour is scheduled to leave at 8:00 a.m. from the Bureau of Land Management, White River Resource Area Office, 317 E. Market Street, Meeker, CO. Anyone desiring to attend the tour should furnish their own four-wheel drive transportation, food, and drink.

Summary minutes of the board meeting will be maintained in the Bureau of Land Management District Office, 455 Emerson Street, Craig, Colorado. This information will be available for public inspection and reproduction (during regular business hours) for 30 days following the meeting.

Marvin W. Pearson,

District Manager.

[FR Doc. 79-15396 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-84-M

[M 34079-J through M 34079-L]

Montana; Right-of-Way Application for Pipeline

May 7, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Kansas-Nebraska Natural Gas Company, Inc., has filed three (3) applications for rights-of-way for 4-inch and 6-inch natural gas pipelines for the Bowdoin Gathering System approximately 6.29 miles across the following public lands in Phillips County:

Principal Meridian, Montana

T. 36 N., R. 30 E.,
Sec. 9, SW¼NW¼, N½SW¼, and SE¼SW¼;
Sec. 17, N½; and.
Sec. 18, SE¼NE¼ and NE¼SE¼.
T. 35 N., R. 31 E.,
Sec. 4, SE¼NW¼, NE¼SW¼, and S½SW¼;
Sec. 5, SW¼NE¼ and S½NW¼;
Sec. 6, S½NE¼;
Sec. 8, SW¼NE¼; and
Sec. 9, N½NW¼.
T. 30 N., R. 32 E.,
Sec. 1, Lot 11; and
Sec. 2, Lot 6.
T. 31 N., R. 32 E.,
Sec. 27, W½W½ and SE¼NW¼; and
Sec. 34, W½NW¼.

The above-named gathering system will enable the applicant to collect natural gas in areas through which the pipeline will pass and to convey it to the applicant's customers.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Airport Road, Drawer 1160, Lewistown, Montana 59457.

Roland F. Lee,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15397 Filed 5-16-79; 8:45 am]
BILLING CODE 4310-84-M

Montana Wilderness Inventory of Areas Affected by the Northern Tier Pipeline

May 7, 1979.

Notice is hereby given that the Montana Bureau of Land Management has completed the final phase of wilderness inventories on certain public lands in Montana. This inventory has been conducted on inventory units proposed to be crossed by the Northern Tier Pipeline. These areas were inventoried according to the provisions of Section 603 of the Federal Land Policy and Management Act of 1976 (PL 94-579) and Section 2(c) of the Wilderness Act of 1964 (PL 88-577).

The following inventory units were found to have wilderness characteristics as described in Section 2(c) of PL 88-577 and are hereby designated wilderness study areas: MT-074-150 Wales Creek (11,580 acres)

This unit originally contained 20,056 acres. Boundary modifications were made during the intensive inventory to exclude a roaded area which clearly and obviously did not meet wilderness criteria. Another boundary modification was made after the proposed wilderness study area decision was announced in the Federal Register, March 1. This modification eliminates approximately 4,563 acres from the southern portion of the inventory unit in the Douglas Creek drainage. These lands were found not to meet the Bureau of Land Management's interpretation of contiguous lands as defined for wilderness study purposes. MT-024-684 Terry Badlands (44,515 acres) MT-024-685 Woody-Flat Creek (9,800 acres)

The area known as Woody-Flat Creek is being placed back in the statewide intensive inventory with the exception of 15,700 acres originally contained in the initial inventory unit. This acreage was eliminated from further consideration on the basis of existing roads and lack of opportunities for naturalness, solitude and primitive or unconfined types of recreation. The reduction in inventory unit size eliminates all conflict with the proposed Northern Tier Pipeline.

The following inventory units are hereby dropped from further wilderness consideration and will no longer be subject to the restrictions imposed by Section 603 of PL 94-579:

Inventory unit numbers	Common name	Public land acreage
MT-048-689	Cabin Creek	13,200
MT-048-674	Nelson Creek	5,499
MT-048-666	Hagen Gap	10,800
MT-024-667	Timber Creek-Big Dry Creek	10,100
MT-048-690	Cedar Creek	15,000
MT-048-668	Big Dry Arm	9,478

The final decisions listed herein shall become effective thirty days after this notice is published in the Federal Register. Persons wishing to protest any of the wilderness study area designations or decisions not recommending wilderness study area status for the six areas listed above shall have thirty days from the date of this publication in the Federal Register to do so. Such persons should file a written protest, specifying the area under protest, the reasons for the protest and supporting data, with the State Director, Bureau of Land Management, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107.

Any person adversely affected by the State Director's decision on such written protest may appeal such decision by following normal procedures applicable to formal appeals to the Interior Board of Land Appeals which are published in 43 CFR Part 4.

Edwin Zaidlicz,
State Director.

[FR Doc. 79-15398 Filed 5-16-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 36679]

New Mexico; Application

May 9, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Phillips Petroleum Company has applied for one 6⅝-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 27 E.,
Sec. 35, S½SE¼.

This pipeline will convey natural gas across 0.118 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,
Chief, Branch of Lands, and Minerals Operations.

[FR Doc. 79-15399 Filed 5-16-79; 8:45 am]
BILLING CODE 4310-84-M

[OR 20169]

Oregon; Proposed Withdrawal and Reservation of Lands

The Bureau of Land Management, Department of the Interior, on April 24, 1979, filed application Serial No. OR 20169 for the withdrawal of the following described lands from location under the mining laws but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

T. 36 S., R. 36 E.,
Sec. 5, Lots 3 and 4, S½NW¼, and N½SW¼;
Sec. 6, Lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 18, Lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 20;

Sec. 30, Lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 32.
T. 37 S., R. 36 E.,
Sec. 6, Lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 17, NW¼SW¼ and S½S½;
Sec. 18, Lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 19, Lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 20;
Sec. 21, SW¼NE¼, NW¼NW¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 22;
Sec. 24, SW¼NE¼ and W½SW¼;
Sec. 25, SE¼NE¼, S½NW¼, SW¼, and SW¼SE¼;
Secs. 26 and 35.
T. 35 S., R. 37 E.,
Sec. 17, N½, E½SW¼, and SE¼;
Sec. 18, Lots 1, 2, 3, and 4, NE¼, E½W½, and W½SE¼;
Sec. 19, Lots 1, 2, 3, and 4, E½W½, and W½E½;
Sec. 30, Lots 1, 2, 3, and 4, and E½NW¼;
Sec. 31, Lots 1 and 2 and E½E½;
Sec. 32;
Sec. 33, W½NW¼;
Sec. 34.
T. 36 S., R. 37 E.,
Sec. 5, Lots 2, 3, and 4, SW¼NW¼, and NW¼SW¼;
Sec. 7, Lots 1, 2, 3, and 4, NW¼NE¼, and NE¼NW¼;
Sec. 8;
Sec. 18, Lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 20;
Sec. 30, Lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 32.
T. 37 S., R. 37 E.,
Sec. 30, Lots 18, 20, and 21;
Sec. 31, Lots 2, 3, 4, 7, 10, 11, and 14 to 23, incl.
T. 38 S., R. 38 E.,
Sec. 13, Lot 1 and NE¼SE¼.
T. 38 S., R. 39 E.,
Sec. 18, Lots 4 and 5, E½SW¼, and SW¼SE¼;
Sec. 19, W½NE¼ and NE¼NW¼.

The areas described aggregate 18,459.79 acres in Harney and Malheur Counties, Oregon.

The purpose of the withdrawal is to protect the status of the lands to permit consummation of a pending land exchange. Segregation of the lands from mining claim location by this notice would be temporary and would terminate upon completion of the exchange or after two years, whichever occurs first.

On or before June 29, 1979, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below, on or before June 29, 1979. Notice of the public hearing will be published in the Federal Register giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B.

The Department's regulations at 43 CFR Section 2351.4(c) provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also assure that the area sought is the minimum essential for the proposed use and provide for the maximum concurrent utilization of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested. The determination of the Secretary on the application will be published in the Federal Register.

Current administrative jurisdiction over the described lands will not be affected by the temporary segregation. The segregative effect of the application shall terminate upon (1) rejection of the application by the Secretary, (2) completion of the land exchange, (3) withdrawal of the lands by the Secretary, or (4) the expiration of two years from the date of publication of this notice.

All communications (except public hearing requests) in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: May 9, 1979.

Virgil O. Seiser

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15400 Filed 5-16-79; 8:45 am]
BILLING CODE 4310-84-M

[Wyoming 64657]

Wyoming; Application

May 2, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Stauffer Chemical Company of Green River, Wyoming filed an application to amend its pending right-of-way application to construct additional lateral pipelines ranging from three to eight inches in size for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 112 W.,
Secs. 4, 6 and 8.
T. 21 N., R. 112W.,
Secs 8, 16, 20, 22, 24, 26, 28, 32 and 36.

The proposed lateral pipelines are an expansion of Stauffer's gathering system and will transport natural gas from the Whiskey Butte Unit Well Numbers 12, 16, 20, 22, 23, 24, 27, 33, 35, 36, 37, 39 and 41 to points of connection with Stauffer Chemical's existing lines all within Tps. 20 and 21 N., R. 112 W., Lincoln County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P. O. Box 1869, Highway 187 N., Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-15401 Filed 5-16-79; 8:45 am]
BILLING CODE 4310-84-M

Results of Test Applications of Draft Criteria of Unsuitability for Coal Development

AGENCY: Bureau of Land Management (BLM), U.S. Department of the Interior.

ACTION: Notice of Availability of Report.

SUMMARY: The BLM has prepared draft supplements to certain management framework plans (MFP), applying interim criteria for the identification of lands as unsuitable for all or certain types of coal mining operations. In a Notice published on December 8, 1978, (43 FR 57662–57670) the BLM explained why the supplements were being prepared, what standards should be used, and how the public would participate. In a follow-up Notice published April 10, 1979, (44 FR 21380), the BLM reported on the steps which had been taken since the previous Notice. This Notice reports the completion of a report by the BLM showing the results of the test

applications of the draft unsuitability criteria and the BLM's recommendations for modifications to the draft criteria. On June 1, the Secretary of the Interior will decide upon the need for, and form of, a Federal coal management program. As part of that decision, he will consider the unsuitability criteria concept and the substance of, and procedures for, the application of each criterion. Final plan supplements will not be available until the BLM has revised these draft supplements to be in accord with the final criteria selected by the Secretary.

ADDRESS: Request for copies and comments should be sent to: Director (140) Bureau of Land Management, U.S. Department of the Interior, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Director, Office of Coal Management (202) 343-4636 or Robert A. Jones, Chief, Division of Environmental and Planning Coordination (202) 343-5682.

SUPPLEMENTARY INFORMATION: The initial field application of the draft criteria has now been completed. In order to provide a forum for assessing all the application results and to develop BLM recommendations to the Department for its determination of final unsuitability criteria, a BLM workshop was held April 16-20, 1979, in Denver, Colorado. Attendees included representatives of BLM Washington Office and Field Offices in Colorado, Montana, Utah, New Mexiso, Wyoming, and the Eastern States; the Department of the Interior; the U.S. Fish & Wildlife Service; the U.S. Geological Survey; the Office of Surface Mining; the U.S. Forest Service; and the Department of Energy. April 16 and 17, the group heard presentations from BLM field personnel on the outcome of the applications in 10 planning areas in the States listed above. The following table summarizes acreages and tonnages found unsuitable through application of the interim criteria.

BILLING CODE 4310-31-M

STARLER/FWS & YURMAN/BLM
343-4902 343-5682

STUDY AREAS/APPLICATIONS WITH EXCEPTIONS; ACRES UNSUITABLE

UNSUITABILITY CRITERIA	NORTH DAKOTA GOLDEN VALLEY	MONTANA DECKER	OTTER CREEK	ASHLAND SOUTHEAST	ASHLAND NORTH	COLDSTRIP	WYOMING HIGHLIGHT	HANNA	RED RIM	COLORADO WILLIAMS FORK
FEDERAL LAND SYSTEMS			130			480				
R-O-W AND EASEMENTS										
BUFFER ZONES, ETC		250				75		40	46	
WILDERNESS STUDY AREAS										
SCENIC AREAS					98					
SCIENTIFIC STUDIES									10	
HISTORIC LANDS		- -						240	620	120
NATURAL AREAS										
FEDERAL T/E SPECIES										17559
STATE T/E SPECIES										19464
BALD & GOLDEN EAGLE NEST		10						107	150	955
BALD & GOLDEN AREAS										17112
FALCON CLIFF NEST SITES								100	122	
MIGRATORY BIRDS										
STATE RES. F & W		- -	15	30		15		109	10763	28727
WETLANDS								5045	34	27820
FLOODPLAINS			8			48		5077	3530	3030
MUN. WATER SHEDS										
NATIONAL RESOURCE WATERS										
STATE LANDS UNSUIT.										
STATE PROPOSED CRIT.										
PRIME FARM LANDS		126				72		3310	200	
ALLUVIAL VALLEY FLOORS		296	11	46		- -				
RECLAIM		- -	- -	- -	- -					
ACRES	NOTE: THE TOTALS OF UNSUITABILITY CRITERIA ARE NOT SIGNIFICANT DUE TO OVERLAPS AMONG CRITERIA									
UNADJUSTED TOTAL AFFECTED ACRES		682								
OVERLAP ADJUSTMENT*		-0-								
TOTAL AFFECTED ACRES	385	682	164	76	98	690	-0-	4284*	8726*	35709
TOTAL STUDY AREA ACRES	233506	9501	5157	2068	2511	7022	37080*	46830	40700	167384.5
% AFFECTED OF STUDY AREA	.16%	7.18%	3.18%	3.67	3.9	9.82	-	9.15	21.4%	21.3%
COAL TONNAGE **										
TOTAL FEDERAL COAL $x10^3$	718772.0	931842.3	461830.3	227380.0	238650.0	296610.0	5600000	33343.0	230728.3	1616891
TONS AFFECTED $x10^3$	14386.6	37708.0	16982.2	8395.2	9313.9	29145.6	-	3050.2	49467.7	344397.8*
% TONS AFFECTED	2.0%	4.05%	3.67%	3.69	3.9	9.82	-	9.15%	21.4%	21.3%
							*18000 ACRE SUITABLE PENDING FURTHER STUDY	*MULTIPLE USE OVER LAP IS NOTED SEPARATELY	*MULTIPLE USE OVER LAP IS NOTED SEPARATELY	*THIS IS 21.3% OF TONNAGE OR 9666 TONS PER ACRE

* COMPUTATION
** RESOURCES

BILLING CODE 4310-31-C

Application of the criteria and exceptions did not result in wholesale elimination of large acreages or tonnages; however, the coal states BLM offices indicated it can reasonably be expected that some of the lands found acceptable for further consideration for coal leasing will eventually require additional inventory and study before final informed management decisions can be made.

The general conclusion of the BLM report is that use of the unsuitability criteria will facilitate responsible, effective land use planning that accommodates coal mining and other legitimate resource uses. Probably the largest question mark remaining as to the availability of coal lands for leasing following planning now evolves around, not acreages or tonnages available for consideration, but the *land patterns* which come through planning as available for further consideration for leasing. Deletions due to multiple-use needs, unsuitability criteria and surface owner consultation may result in coal land patterns from which only a few logical mining units can be forged. Actual effects cannot yet be finally determined, but field tests suggest the problems may be substantial when "final" criteria have been applied and surface owner consultation has been thoroughly applied. Solid results for evaluation should be available by mid-summer.

April 18–20 a small workforce of BLM personnel worked in Denver to formulate recommendations for changes in the wording of the criteria and their manner of application. The work group product was further analyzed by BLM's Office of Coal Management, the Division of Planning and Environmental Coordination and the Divisions of Watershed and Wildlife.

These efforts resulted in a final report to the Office of Coal Leasing, Planning and Coordination. The significant recommendation made by BLM in this report for revising the criteria was for incorporation of the exceptions into the body of each criterion. There are three related reasons for this recommendation:

(1) In practice the application of some criteria resulted in the elimination of large areas from further consideration, whereas the subsequent application of the exceptions reclassified most of those same lands as "acceptable." Field personnel found this exercise confusing to the public. They expressed concern there would be an appearance of bad faith in reporting the results of this two-step process.

(2) The present format of the criteria has two parts—criterion and exception—reflects an intent to indicate the sequence to be used in the application process, as outlined in Instruction Memorandum 79–139. That is, the criterion would be applied separately from the exception. One of the significant findings of the test applications was that the criterion-exception application sequence of steps outlined in IM 79–139 is not practical and should be revised.

(3) Most importantly, in BLM's view it is inappropriate for the unsuitability criteria, as statements of Departmental and Bureau policy, to carry procedural overtones, either in format or content. Procedural matters such as sequence of application steps, level of inventory data required, and staging of applications in various phases of the decision process, should be reserved for treatment in Bureau guidance to the field in the form of instruction memoranda and manuals.

A memorandum forwarding the application results and containing recommendations and the reasoning behind them was submitted to the Department May 1, 1979. The report and appendices containing presentation material from the Denver conference and papers prepared there by the workgroup are on file in the Office of Coal Management, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240 and are included in the rulemaking docket for the Federal Coal Management Program proposed on March 19, 1979, 44 FR 18000 (1979). Copies of the report, but not the appendices, are available on request from the Office of Coal Management. The appendices were not reproduced because of their bulk and odd page sizes. The report, together with the comments received on the criteria provisions of the proposed coal management regulations published March 18, 1979, 44 FR 16800–16845), comments on the criteria discussed in the draft and final programmatic environmental statement, and an economic analysis of the costs of the unsuitability criteria will be used by the Office of Coal Leasing, Planning and Coordination to prepare a decision document on the unsuitability criteria for use by the Secretary in June 1 coal management program decisions. The economic analysis is available for inspection at the address given above.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Approved by:

Guy R. Martin,

Assistant Secretary of the Interior.

May 14, 1979.

[FR Doc. 79–15445 Filed 5–16–79; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Contract Negotiations with the East Yolo Community Services District; Availability of the Proposed Contract for Public Review and Comment; Correction

In FR Doc. 79–11665 appearing at page 22522 in the Federal Register of April 16, 1979, the telephone number in the penultimate paragraph should be (916) 484–4380.

Dated: May 3, 1979.

R. Keith Higginson,

Commissioner of Reclamation.

[FR Doc. 79–14440 Filed 5–16–79; 8:45 am]

BILLING CODE 4310-09-M

Geological Survey

[Outer Continental Shelf (OCS) Order No. 5]

Failure and Inventory Reporting System Requirements

AGENCY: Geological Survey, U.S. Department of the Interior.

ACTION: Solicitation of comments with regard to content of the U.S. Geological Survey failure reports.

SUMMARY: By Notice in the Federal Register dated June 8, 1978, the U.S. Geological Survey advised the public of their intent to include in OCS Order No. 5 a requirement for operators of production platforms in the OCS to submit certain data in accordance with a safety device Failure and Inventory Reporting System (FIRS). The purpose of this Notice is to solicit comments from the public with regard to content of the Failure and Inventory Reporting System reports generated by the U.S. Geological Survey from the data collected.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Krahl, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092 (703/860–7531).

SUPPLEMENTAL INFORMATION: The Safety and Pollution-Prevention Device Failure and Inventory Reporting System will allow the Geological Survey to gather, store, and readily retrieve inventory and failure information on the safety devices and provide the unique capability to furnish an industrywide exchange of experience and information.

The FIRS program is applicable to OCS structures which produce or process hydrocarbons and includes the attendant portion of hydrocarbon pipelines when physically located on the structure for whatever purpose. Output from the program can be used for the mutual benefit of the Geological Survey, the offshore oil industry, and the equipment manufacturers in focusing attention on the devices showing recurring failures. The FIRS program will demonstrate the effectiveness of an aggressive corrective action policy and will significantly shorten the period of time required to identify problem areas, rather than having to wait for each operator to experience an expensive series of replacements.

The system is composed of two distinctively interdependent programs. The Safety Device Inventory Reporting program is designed to provide information depicting the number of safety and pollution-prevention devices by type, manufacturer, and model which are in service on the offshore production platforms. The Safety Device Failure Reporting program is designed to provide information relative to failures of these devices by failure causes, corrective measures, device type, manufacturer, model, and frequency of failure.

Both inventory and failure reports are to be submitted on devices which are used in the safety and pollution-prevention systems of offshore structures, including satellites and jackets, which produce or process hydrocarbons, and the hydrocarbon pipelines thereon. These devices are:

Blowdown valve	(BDV)
Burner flame detector	(BSL)
Check valve	(FSV)
Combustible gas detector	(ASH)
Emergency shutdown valve	(ESD)
Level sensor:	
High	(LSH)
Low	(LSL)
Hi/Lo	(LSHL)
Pressure sensor:	
High	(PSH)
Low	(PSL)
Hi/Lo	(PSHL)
Relief valve	(PSV)
Shutdown valve	(SDV)
Subsurface-safety valve	(SSSV)
Surface-safety valve	(SSV)
Temperature sensor:	
High	(TSH)
Low	(TSL)
Hi/Lo	(TSHL)
Valve actuator on the shutdown valve, the blow-down valve, the surface-safety valve	(VA)

The detailed failure and inventory information will be gathered by utilizing a standard format as indicated on the Geological Survey's Safety Device Inventory Report Form (Form 9-1994) and safety Device Failure Report Form (Form 9-1995). The specific data submission method may be selected by the operator in the form of:

1. Forms furnished by the Geological Survey.
2. ADP card decks on standard 80-column cards.
3. Magnetic tapes which are 9 track, 800 BPI, unlabeled, blocking cannot exceed 1,040 characters, odd parity, single gap (i.e., compatible with IBM equipment—EBCDIC).

Specific comments are requested concerning recommendations as to content of the failure reports generated and disseminated by the U.S. Geological Survey with regard to what usable information should be provided and the most suitable method to present the data to the public.

Dated: May 3, 1979.

J. R. Balsley,

Acting Director.

[FR Doc. 79-15403 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Cuyahoga Valley National Recreation Area Advisory Commission Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning at 7:30 p.m. (EDT), June 14, 1979, at Happy Days Center located on State Route 303 (Streetsboro Road) one mile west of State Route 8, near Peninsula, Ohio. Parking is on the north side of Route 303 and a pedestrian tunnel leads to the building on the south side of the highway.

The Commission was established by Pub. L. 93-555 to meet and consult with the Secretary of the Interior on matters relating to the development of the Cuyahoga Valley National Recreation Area and with respect to carrying out the provisions of the Public Law.

The members of the Commission are as follows:

Mrs. Robert G. Warren (Chairman),
Mr. Courtney Burton,
Mr. Norman A. Godwin,
Mr. Donald W. Haskett,
Mr. Robert L. Hunker,
Mr. James S. Jackson,
Mr. Melvin J. Rebholz,
Mrs. Roger L. Rossi,
Mrs. George N. Seltzer,
Ms. Robbie Stillman,
Mr. Barry K. Sugden,
Mr. Robert W. Teater,
Mr. William O. Walker.

Matters to be discussed at this meeting include.—1. Camp Mueller and the recreation interests of inner-city youth.

2. A proposal for a North American Indian Cultural Center.

3. Report on Park operations.

The meeting will be open to the public. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from William C. Birdsell, Superintendent, Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264, telephone 216-650-4414. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road, (State Route 303) two miles east of Peninsula, Ohio.

Dated: May 8, 1979.

Harold Thompson,

Acting Regional Director Midwest Region.

[FR Doc. 79-15424 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-7-M

Evelyn Hill, Inc.; Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before June 18, 1979, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Evelyn Hill, Inc., authorizing it to continue to provide sale of souvenir and gift items facilities and services for the public at Fort McHenry National Monument and Historic Shrine for a period of five (5) years from January 1, 1980, through December 31, 1984.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Office of the Superintendent, Fort McHenry National Monument and Historic Shrine.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1979, and therefore, pursuant to the Act of

October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Evelyn Hill, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Evelyn Hill, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of Evelyn Hill, Inc., (as determined by the Secretary) is submitted, Evelyn Hill, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Evelyn Hill, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be submitted on or before June 18, 1979, to be considered and evaluated.

Interested parties should contact the Chief, Office of Concessions Management, National Park Service, Washington, D. C. 20240, for information as to the requirements of the proposed contract.

Dated: May 9, 1979.

Daniel J. Tobin, Jr.,

Acting Director, National Park Service.

[FR Doc. 79-15425 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-7-M

Revision of Policy on Motion Picture and Still Photography

AGENCY: National Park Service, Interior.

ACTION: Proposed revision of management policy on motion picture ans still photography.

FOR FURTHER INFORMATION CONTACT: Chief, Office of Management Policy, National Park Service, 18th and C Streets, N.W., Washington, D.C. 20240 (202) 343-7456.

Introduction

The National Park Service is proposing revision of its management policy on motion picture and still photography. The draft policy applies only to filmmaking for public consumption—commercial and public television crews, advertisers, news photographers and other professional photographers. It does *not* apply to private individuals and families visiting areas of the National Park System.

The proposed policy revision is based on definitions, conditions, responsibilities and other information contained in a recently prepared filming guideline. Copies of the guideline can be obtained from the Office of Public Affairs, National Park Service, 18th and C Street, N.W., Washington, D.C. 20240.

The policy has been revised to clarify conditions when filming may be done in areas of the National Park System. Two conditions have been added: protection of First Amendment rights of filmmakers and guarantee of the same access by demonstrators or other persons exercising First Amendment rights (due process).

The second paragraph of the proposed policy deals with permits, requiring compliance with other Service policies, guidelines, and Departmental regulations. The regulations are listed in the filming guideline, which is specifically referenced in the policy.

In the previous policy, the second paragraph dealt with responsibility which is now covered in the guideline.

Proposed Policy Revision

Motion Picture and Still Photography

The making of still and motion pictures or television productions for public consumption is an acceptable park use provided these activities pose no threat to the park resources in the judgement of the park manager, and do not conflict unduly with the public's normal use of the park. The Service shall protect the First Amendment rights of those wishing to film, and to ensure due process, shall guarantee that access by demonstrators or other person exercising First Amendment rights is at least equal to that afforded filmmakers.

Certain filming activities require permits that ensure compliance with Service policies on resources protection and visitor use, Service guidelines and Departmental regulations.

Reference: Filming Guideline, NPS-21, (date).

Written Comments

Written comments on this proposed policy change are invited and will be accepted for a period of thirty (30) days from the date of this notice. Send them to Director, National Park Service, Attention: Chief, Office of Management Policy, Washington, D.C. 20240.

Dated: March 27, 1979.

William J. Whalen,

Director, National Park Service.

[FR Doc. 79-15440 Filed 5-16-79; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances In Schedules I and II; Final 1979 Revised Aggregate Production Quotas

Section 306 of the comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On April 6, 1979, a notice of the proposed revised aggregate production quotas for 1979 was published in the Federal Register (44 FR 20809-10). All interested parties were invited to comment on or object to the proposed aggregate production quotas on or before May 7, 1979. One comment was received from Arenol Chemical Corporation of Long Island City, New York.

Relative to amphetamine, Arenol Chemical Corporation commented on the inventory allowance required by § 1303.24(a)(1) of Title 21 of the Code of Federal Regulations. Based on their 1978 sales and inventory experience, Arenol concluded that excessive 1978 year-end inventories did not exist and that, therefore, no reduction in the 1979 aggregate production quota for amphetamine is necessary. However, this reduced quota is expected to be sufficient to meet legitimate medical needs as well as provide the inventory allowance for bulk manufacturers required by regulation. Arenol did not specifically request an administrative hearing concerning the proposed revised aggregate production quota for amphetamine. Pursuant to § 1303.11(c) of Title 21 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration has determined that no hearings relative to this quota are necessary.

No other comments and no requests for hearings were received. Therefore, under the authority vested in the Attorney General by section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the revised 1979 aggregate production quotas for the below-listed controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Revised 1979 quotas
Alphaprodine	67,000
Amobarbital	6,295,000
Amphetamine	2,715,000
Codeine (for sale)	55,827,000
Codeine (for conversion)	3,500,000
Desoxyephedrine (1,914,000 g. for 1-desoxyephedrine and 190,000 g. for methamphetamine)	2,104,000
Dihydrocodeine	1,160,000
Fentanyl	2,500
Levorphanol	10,100
Meperidine	10,723,000
Methaqualone	9,631,000
Methylphenidate	1,185,000
Morphine (for sale)	867,000
Morphine (for conversion)	68,348,000
Opium (for tinctures, extracts etc., expressed in terms of USP powdered opium in morphine content)	2,393,000
Phenmetrazine	1,123,000
Secobarbital	4,135,000
Thebaine (for sale)	2,676,000
Thebaine (for conversion)	1,368,000

This order is effective upon publication.

Dated: May 11, 1979.

Peter B. Bensinger,

Administrator.

[FR Doc. 79-15383 Filed 5-16-79; 8:45 am]

BILLING CODE 4110-09-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting Addendum

The location and agenda for the May 17–18, 1979 meeting of the National Advisory Committee on Oceans and Atmosphere, announced in the Federal Register for May 2, 1979, have been changed. The meeting will be held in the Penthouse of Page Building I, 2001 Wisconsin Avenue, NW., Washington, D.C., rather that at the University of Rhode Island, as previously announced. The agenda has been changed by the deletion of the presentations of University of Rhode Island programs. The amended agenda is as follows:

Thursday, May 17, 1979

10:00 a.m.–10:30 a.m.—Plenary Session

- Opening Remarks—Acting Chairperson, NACOA.
- Meeting Plans—Acting Chairperson, NACOA.

10:30–12:00 noon—Working Group Session

- Ocean Use Panel/R&D Panel.
- Comments on Federal Plan for Ocean Pollution Research, Development, and Monitoring.
- Civil Ocean Technology.
- Ocean Dumping of Dredge Spoils.

12:00 p.m.–1:30 p.m.—Lunch

1:30 p.m.–5:00 p.m.—Plenary Session

- Coast Guard R&D—RADM Alfred P. Manning, Chief of R&D, U.S. Coast Guard.
- Discussion of NACOA Position Regarding Draft Federal Plan for Ocean Pollution Research, Development, and Monitoring—Dr. Alfred A. Keil, NACOA.

Friday, May 18, 1979

8:00 a.m.–9:00 a.m.—Plenary Session

- Review of NACOA Eighth Annual Report—Acting Chairperson, NACOA.

9:00 a.m.–11:00 a.m.—Working Group Sessions

- Atmospheric Affairs Panel.
- Review of Weather Modification Statement for Eighth Annual Report.
- National Climate Program.
- Weather Services.
- National and International Policy Panel.
- Proposed DNR Legislation.
- LOS Update.

11:00 a.m.–11:45 a.m.—Plenary Session

- Panel Reports.

11:45 a.m.–1:00 p.m.—Lunch

1:00 p.m.–1:45 p.m.—Memorial Service, Professor Donald L. McKernan, Chairman, NACOA—Bethlehem Chapel National Cathedral

2:00 p.m.—Adjourn

Additional information concerning this meeting may be obtained through the Committee's Acting Executive Director, John W. Connolly, whose mailing address is: 2001 Wisconsin Avenue, NW., Page Building I, Suite 434, Washington, D.C. 20235. The telephone number is (202) 254-8418.

Samuel H. Walinsky,

Executive Officer.

[FR Doc. 79-15374 Filed 5-16-79; 8:45 am]

BILLING CODE 6310-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-51)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

The Subcommittee on Aviation Safety Reporting System (ASRS) will meet June 5–7, 1979, at the Airline Pilots Association Headquarters, 1625 Massachusetts Avenue, NW, Washington, DC, 8th Floor Conference Room. The meeting will be open to the public on a first-come, first-served basis up to the seating capacity of the room (about 20 persons including the Subcommittee members and participants).

The Subcommittee, which serves in an advisory capacity only, reviews ASRS operations and NASA actions taken in response to Subcommittee recommendations. The Chairperson is John H. Winant. There are currently 12 members on the Subcommittee. Following is the approved agenda for the meeting.

Agenda

June 5, 1979

9:00 a.m.—Opening Comments.
9:30 a.m.—ASRS Status Report.
10:00 a.m.—Presentation of Final Task Group Reports
1:00 p.m.—Presentation of Final Task Group Reports continued
5:00 p.m.—Adjourn

June 6, 1979

9:00 a.m.—Presentation of Final Task Group Reports Concluded
1:00 p.m.—Presentation and Discussion of Subcommittee Recommendations
5:00 p.m.—Adjourn

June 7, 1979

9:00 a.m.—Discussion of Recommendations and Format of Final Report
11:00 a.m.—Summary Comments by Chairperson
1:00 p.m.—Adjourn

For further information, contact Herman A. Rediess, NASA Headquarters, Code RTE-6, Washington, DC 20546. Telephone 202/755-2243.

May 14, 1979.

Arnold W. Frutkin,

Associate Administrator for External Relations

[FR Doc. 79-15410 Filed 5-16-79; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD

Notice of Time and Place Change of the Commission's Media Subcommittee

May 9, 1979.

The Monday, May 7, 1979 issue of the Federal Register (44 FR 26815) announced that the Media Subcommittee of the National Commission on the International Year of the Child would meet from 1:00 p.m. to 5:00 p.m. at 331 East 38th Street, New York City, New York. The announcement should have stated the time from 11:00 a.m. to 2:00 p.m. at the U.S. Mission to the United Nations, Room 711, 799 U.N. Plaza, New York City, New York.

Benedict J. Latteri,

Administrative Officer, National Commission on the International Year of the Child.

[FR Doc. 79-15404 Filed 5-16-79; 8:45 am]

BILLING CODE 682-49-M

NATIONAL COMMISSION ON SOCIAL SECURITY

May 10, 1979.

Meeting

The National Commission on Social Security will hold a public meeting at Washington, D.C. on June 5, 1979 in Room 2008 of the New Exective Office Building at 726 Jackson Place, N.W. The Commission will receive a briefing from the Health Care Financing Administration on Medicare and will discuss the Hospital Insurance Program.

The meeting will begin at 9:00 a.m. and continue until Commission business is completed but no later than 5:00 p.m. The meeting will be open to the public, in accordance the Federal Advisory Committee Act.

Additional information about the meeting may be obtained from the Commission office: Room 131A—Pension Building, 440 G Street, N.W. Washington, D.C. Phone: 376-2622.

Francis J. Crowley,

Executive Director.

[FR. Doc. 79-15405 Filed 5-16-79; 8:45 am]

BILLING CODE 6820-AC-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-313 and 50-368]

Arkansas Power & Light Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 42 and 11 to Facility Operating Licenses Nos. DPR-51 and NPF-6, issued to Arkansas Power & Light Company (the licensee), which revised the Technical Specifications for operation of Arkansas Nuclear One, Units Nos. 1 and 2 (ANO-1 & 2) located in Pope County, Arkansas. The amendments are effective as of the date of issuance.

The amendments modify the ANO-1 & 2 Appendices A and B Technical Specifications dealing with Arkansas Power and Light Company management organization structure.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the licensee's application dated February 12, 1979, (2) Amendment No. 42 to License No. DPR-51 and Amendment No. 11 to License No. NPF-6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Arkansas Polytechnic College, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 3rd day of May 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-15310 Filed 5-16-79; 8:45 am]

BILLING CODE 7590-01-M

Availability of Environmental Standard Review Plans

The Nuclear Regulatory Commission has issued the set of Environmental Standard Review Plans (ESRPs) that will be used to direct the NRC staff's environmental review of applications for nuclear power plant construction permits. These plans will also serve to inform interested parties of the nature of the technical portion of the environmental review and the basis for the various technical conclusions made.

Three groups of Draft ESRPs were issued to assist the NRC staff in formulating the final ESRPs. The Draft ESRPs, published as NUREG-0158, were issued and noticed in the Federal Register as follows: (1) Part I, January 1977 (42 FR 8443, February 1977); (2) Part II, May 1977 (42 FR 27702, May 31, 1977); and (3) Part III, December 1977 (43 FR 1159, January 6, 1978). Public comments on these Draft ESRPs were invited. Revisions have been made in ESRPs after analyzing the comments received.

Draft ESRPs (NUREG-0158) are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. Requests for single copies of Parts I, II, and III should be addressed to the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Copies of the complete set of 93 final ESRPs (NUREG-0555) can be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (703-557-4650).

Dated at Bethesda, Maryland this 11th day of May 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-15314 Filed 5-16-79; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-317 and 50-318]

Baltimore Gas & Electric Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 38 and 21 to Facility Operating Licenses Nos. DPR-53 and DPR-69 issued to Baltimore Gas & Electric Company, which revised Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2 (the facility) located in Calvert County, Maryland. The amendments are effective as of the date of issuance.

The amendment permits the Appendix A Technical Specifications of both Calvert Cliffs Nuclear Power Plant units to:

(1) Limit the maximum boron concentration in the safety injection and refueling water tanks;

(2) Allow reduced shutdown cooling flow when the reactor coolant system is partially drained;

(3) Modify the requirements for air flow distribution checks across the HEPA and charcoal filters;

(4) Correct the safety related hydraulic snubber list (Unit 1 only);

(5) Modify the operability and surveillance requirements for the refueling machine;

(6) Update the organizational control of the security force; and

(7) Revise the hydraulic snubber list to permit modifications of the support system for the auxiliary feedwater discharge piping (Unit 1 only).

The amendments also make administrative type changes to the Appendix B Technical Specifications for both units.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated November 13, 1978 and January 31, 1979, (2) Amendments Nos. 38 and 21 to Licenses Nos. DPR-53 and DPR-69, (3) the Commission's related Safety Evaluation, and (4) the Commission's letter dated April 24, 1979. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 24th day of April 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-15311 Filed 5-16-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-72]

The Institutional Council of the University of Utah; Renewal of Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 10 to Facility Operating License No. R-25 issued to The Institutional Council of the University of Utah (the licensee), which renews the license for operation of the AGN-201M nuclear research reactor (the facility) located in Salt Lake City, Utah. The facility is a research reactor that has been operating since September 12, 1957, and is currently licensed to operate at 5.0 watts (thermal). The amendment is effective as of its date of issuance.

The amendment extends the duration of Facility Operating License No. R-25 until September 12, 1997.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of the proposed issuance of this action was published in the Federal Register on September 8, 1977 (42 FR 45049). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal for the renewal of the Facility Operating License and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to this action.

For further details with respect to this action, see (1) the application for amendment dated July 8, 1977, as supplemented March 3, 1978, and January 2, 1979, (2) Amendment No. 10 to License No. R-25 and (3) the Commission's related safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 2nd day of May 1979.

For the Nuclear Regulatory Commission.

Robert W. Ried,

Chief, Operating Reactors Branch No. 4 Division of Operating Reactors.

[FR Doc. 79-15312 Filed 5-16-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 49 and 48 to Facility Operating License Nos. DPR-32 and DPR-37 issued to Virginia Electric and Power Company, which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2 (the facility) located in Surry County, Virginia. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specification limits for total nuclear peaking factor (F_Q) for Surry Units 1 and 2. The new F_Q was established using an approved ECCS model with a steam generator tube plugging limit of 28%. However, allowable Unit 2 steam generator tube plugging will be limited to 5% at this time because refurbished steam generators are being installed and there is no need for a greater limit.

These amendments also supersede the Exemption to the License for Surry Unit No. 1 dated June 30, 1978, and the Order for Modification of License for Surry Unit No. 2 dated April 28, 1978. Accordingly, that Exemption and Order have been terminated.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. A Notice of Proposed Issuance of Amendment to Facility Operating License in connection with portions of this action was published in the Federal Register on January 19, 1979 (44 FR 4057). No request for a hearing or petition for leave to intervene was filed following that notice of proposed action. The amendments also approve requests for changes to the Technical Specifications which did not involve significant hazards considerations and thus prior public notice of those proposed changes was not required or given.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendment dated December 26, 1978 as supplemented January 9, 1979, (2) Amendment Nos. 49 and 48 to License Nos. DPR-32 and DPR-37, and (3 the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C. and at the Swem Library, College of William and Mary, Williamsburg, Virginia. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 9th day of May, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-15313 Filed 5-16-79; 8:45 am]

BILLING CODE 7590-01-M

[PRM-30-56]

Gulf Nuclear, Inc.; Filing of Petition for Rulemaking

Notice is hereby given that Mr. Walter P. Peeples, Jr., on behalf of Gulf Nuclear, Inc., by letter dated April 12, 1979, has filed with the Nuclear Regulatory Commission a petition for rulemaking.

The petitioner proposes that the Nuclear Regulatory Commission be divided into two separate entities within the NRC. As the petitioner stated one area would cover power reactors, uranium mining, nuclear weapons manufacturing, nuclear fuel processors, and any area that deals with fissile materials. The second area would deal with byproduct materials. Nuclear weapons manufacturing is a responsibility of the Department of Energy rather than the Nuclear Regulatory Commission.

In support of the petition the petitioner states that:

(1) Fissile materials used in power production and the production of nuclear weapons require far more stringent rules than those required of byproduct material users and licensees. This includes regulations concerning shipment and use of these materials. Because the U.S. Nuclear Regulatory Commission is a single entity, all rules pertain to both types of licensees.

(2) The majority of effort of the U.S. NRC is devoted to fissile materials creating enormous costs and efforts to control. The majority of the licensees are byproduct materials users who are forced to share the cost burden exhibited in U.S. NRC fees.

(3) The staff and leadership of the U.S. NRC devotes the majority of its time to expended energy related to power reactors which creates undue burdens on byproduct materials users.

(4) A division of responsibility by NRC would create a positive effect on the general public by making them aware that there are different types of radioactive materials, easing some of the political pressure on the NRC.

(5) Because of the present makeup of NRC controlling both areas, the public apprehension toward power reactors, has a tendency to force over-regulation of byproduct materials because both are jointly referred to as simply "radioactive materials". This detracts from the ability to point out the positive nature of public benefits derived from both types of materials. Since NRC fails to distinguish between the two types of materials, undue burdens in transportation and publicity force byproduct materials users to defend a position they are not totally familiar with. Petitions and regulations, including regulatory guides, are frequently opposed or incorrectly interpreted because of lack of distinction between the two types of materials.

A copy of the petition for rulemaking is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Secretary of the Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by July 16, 1979.

For further information contact: Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

Dated at Washington, D.C., this 11th day of May 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-15309 Filed 5-16-79; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-20]

Accident Report, Safety Recommendations and Responses; Availability

Marine Accident Report

USS L. Y. SPEAR (AS-36) Collision with Liberian Motor Tankship ZEPHYROS, Lower Mississippi River, February 22, 1978 (Report No. NTSB-MAR-79-6).—The National Transportation Safety Board on May 7 released the formal report on the investigation of this accident. The investigation, conducted jointly by the U. S. Coast Guard and the Safety Board, was made in New Orleans, La., February 27 to April 1, 1978; the report is based on the factual information developed by the investigation.

As shown by the investigation, the ZEPHYROS was proceeding upbound at a speed of 11 mph over the ground near the right ascending bank of the Mississippi. The upbound L. Y. SPEAR was proceeding at 19 mph near the middle of the river and was overtaking the ZEPHYROS. When the SPEAR was about 500 to 600 feet abeam to the port quarter of the ZEPHYROS, the SPEAR turned to starboard until its bow was headed toward the midships section of the ZEPHYROS. The SPEAR then turned to port, its stern swung to the right, and its starboard quarter struck the port quarter of the ZEPHYROS. Both vessels were moderately damaged and continued to their upriver destinations without further incident. No one on board the ZEPHYROS was injured; nine persons in the SPEAR received minor injuries.

The Safety Board determined that the probable cause of this accident was the failure of the pilot to maintain adequate steering control of the SPEAR. Contributing to the cause were the failure of the Commanding Officer to recognize the heading excursion earlier and his approval of the pilot's request to use flank speed and to overtake the ZEPHYROS at that location.

As a result of this accident investigation, the Safety Board on May 3 issued two safety recommendations to the Coast Guard and one recommendation each to the U. S. Navy and to the Crescent River Port Pilots Association. The Board noted that in 1977, there were 225 collisions on U. S. waters involving ships crossing, meeting, or overtaking—108 of them on Gulf of Mexico inland waters. (See 44 FR 27510, May 10, 1979, for text of recommendations M-79-52 through 55, issued May 3.)

Aviation Safety Recommendations

A-79-31.—A second recommendation has been issued to the Federal Aviation Administration as a result of the Safety Board's investigation into the Antilles Air Boats, Inc., Grumman G-21 accident which occurred last September 2 near St. Thomas, V.I. The aircraft crashed into the ocean while en route from St. Croix to St. Thomas; the pilot and three of the ten passengers died in the accident.

Board investigation revealed that the operator committed poor operational and maintenance practices, falsification of aircraft and aircraft component logbooks, and management practices which often condoned or encouraged the violation of Federal regulations in the interest of company requirements. On May 3 the Safety Board recommended that FAA require that all aircraft maintenance logbook sheets be numbered consecutively (A-79-11). (44 FR 27509, May 10, 1979.) On May 9 the Board recommended that FAA:

Strengthen surveillance and enforcement programs directed toward Part 135 operators to: (1) Provide adequate staffing for FAA facilities charged with surveillance of Part 135 operators; (2) assure uniform application of surveillance and enforcement procedures; and (3) upgrade enforcement procedures and actions in order to provide a viable deterrent to future violations. (A-79—31)

A-79-32 through 34.—These recommendations were issued May 11 following investigation of the crash of a United Airlines DC-8 near Portland, Oreg., last December 28 after fuel exhaustion. The Board's investigation showed that all four engines stopped because of fuel exhaustion as the aircraft approached Portland International Airport for a landing.

Examination of the system components revealed no findings of any discrepancy which would have caused an erroneous fuel-quantity reading on any of the individual tank gages or on the total fuel gage. To the contrary, pertinent cockpit conversation as recorded on the cockpit voice recorder disclosed that 28.8 minutes before fuel was completely exhausted, the flight engineer was aware that only 5,000 pounds of fuel remained. Calculations, based on theoretical fuel consumption rates for the DC-8, showed this to be an accurate figure. However, later in the flight, after it became apparent to the crew that engine flameout was imminent, the cockpit conversation indicated that the captain may have been confused as to the amount of fuel which actually remained. About 6 minutes before all engines stopped, the captain stated that there was 1,000 pounds of fuel in the No. 1 tank; the second officer agreed with him.

As a result of its findings during this investigation, the Safety Board recommends that FAA:

Issue an Operations Alert Bulletin to have FAA inspectors assure that crew training stresses differences in fuel-quantity measuring instruments and that crews flying with the new system are made aware of the possibility of misinterpretation of gage readings. (A-79-32)

Emphasize to engineering personnel who approve aircraft engineering changes or issuance of Supplemental Type Certificates the need to consider cockpit configuration and instrumentation factors which can contribute to pilot confusion, such as the use of similar-appearing instruments with different scale factors. (A-79-33)

Audit Supplemental Type Certificate SA3357WE-D for completeness, especially in the area of system calibration after installation. (A-79-34)

All of the above aviation safety recommendations are classified "Class II—Priority Action."

Responses to Safety Recommendations

Aviation

A-78-34.—The Federal Aviation Administration on April 27 updated information on action taken in implementing this recommendation, developed during investigation of the crash on December 11, 1977, of an Air Indiana DC-3 after takeoff from Dress Regional Airport, Evansville, Ind.

FAA's response of July 24, 1978 (43 FR 37777, August 24, 1978) advised that its regional offices had been requested that air traffic facility chiefs be directed to review procedures pertaining to dissemination of weather and to take positive measures to ensure that controllers are aware of new weather as it is received. Also, all regions have been asked to evaluate the situation and provide recommendations to best accomplish this task.

As a result, FAA has added a paragraph to Facility Management Handbook 7210.3D, effective July 1, 1979, providing direction to terminal facilities for the timely handling of current weather observations. Also, the Air Traffic Service and the Airway Facilities Service are developing a display for the tower cab which will provide controllers with a consolidated display of all necessary information data. This consolidated cab display (CCD) is in the engineering stage with the first prototype systems to be installed at Boston and Atlanta. The CCD will include both automatically and manually induced weather information. When weather information is received, CCD will activate a visual and aural alert to the controller. To silence the alert requires a controller to manually acknowledge receipt. FAA states that because of the large cost of the CCD, it is planned to install them only at Level IV and V terminals. This system will be installed at nine locations in fiscal year 81. Concerning all other locations, there is no known across-the-board equipment to accomplish the job.

A-79-3.—FAA's letter of May 4 is in response to a Class I—Urgent Action recommendation issued following investigation of the crash of a Beechcraft Model 35 at Redmond, Wash., August 19, 1977. The recommendation asked FAA to issue an Airworthiness Directive to (1) require that a one-time inspection of all Thompson Model 1900 fuel pumps be accomplished to determine the condition of the driver and drive pins (PN TF-1991) and (2) establish an overhaul interval of 800 operating hours on the pump.

FAA reports that a review of the records of service difficulties from FAA's Maintenance Analysis Center has revealed five incidents involving Thompson Products TF-1900 fuel pumps. Three of these cases were discovered prior to complete failure during inspections and subsequent to publication of the item in the 1975 FAA General Aviation Inspection Aids Summary. One pin failed from overload. The pin is designed to fail in shear if excessive binding or other failure of the pump occurs. The remaining pin failure was involved in the Redmond accident. Inspection of the pump revealed excessive wear, and the available records show high time in service. FAA says that evidence now available is insufficient to justify mandatory action. FAA believes that publication of the item in the General Aviation Aids

Summary and the inclusion of an 800-hour overhaul/replacement recommendation in the Beechcraft Pilot's Operations Handbook in January 1977 will minimize the probability of failures in these pumps.

Highway

H-77-25.—The National Safety Council (NSC) on April 23 provided a progress report on implementing this recommendation, issued by the Safety Board following investigation of the July 6, 1976, railroad/highway grade crossing accident at Des Moines, Iowa. The recommendation asked NSC to serve as a national focal point and coordinator for developing, implementing, and evaluating a nationwide "Operation Lifesaver" railroad/highway grade crossing safety program in cooperation with all interested groups, such as the Association of American Railroads, International Association of Chiefs of Police, National Highway Traffic Safety Administration, Federal Highway Administration, Federal Railroad Administration, and the States.

NSC reports naming Ms. Ernie Oliphant of Arizona as national coordinator for the Operation Lifesaver program and assigning an NSC staff member to coordinate and administer program development and support for the States. New materials for programming and promotion purposes have been developed, and the NSC staff will provide assistance to the States in support of the national program drive. NSC will communicate with the railroad industry, Government agencies, volunteer groups and others through its newsletter, "Operation Lifesaver," and will provide a complete information package for the media to assure local, State and national coverage for this program. Six regional workshops are planned to maximize effectiveness of State programs.

Further, NSC reports that since mid-1977 when the Safety Board assisted the Operation Lifesaver program by becoming a visible catalyst, seven States have implemented full or partial programs. California conducted a kickoff of its program of April 17, 1979, North Carolina the same on April 27. Six other States are in the planning stage and 14 others have expressed interest and are seeking assistance. The Association of American Railroads and the National Railroad Passenger Corporation have pledged financial support for the development of program materials.

H-68-18, H-70-4, H-71-9, H-71-10, H-71-34, H-71-87, H-73-1, H-73-7, and H-73-42.—The Federal Highway Administration on May 2 responded to the Safety Board's inquiry of April 6 concerning passenger restraint systems on intercity buses. The Board noted that between 1968 and 1973 eight major highway accidents involving intercity buses had been investigated by the Board. The accidents included bus collisions with trucks, automobiles, and structures; in three instances, the bus rolled over. Fifty fatalities resulted from these eight accidents, and in each of the investigations, the Board concluded that a passenger restraint system would have reduced the severity of the accident. The Board expressed concern that this important transportation safety issue has not been the subject of attention for some time. The Board pointed to the above-noted nine safety recommendations addressed to FHWA following investigation of these bus accidents and asked to be informed as to the status of FHWA's bus passenger restraint feasibility study and any planned action of FHWA related to bus passenger restraint systems.

In response, FHWA reports that the study, "Analysis for Need for Passenger Safety Belt Requirements in Intercity Buses," performed for FHWA by the Institute for Research in Public Safety (IRPS) of Indiana University, is expected to be released publicly within the next 2 weeks. This report states that installing lap belts for all seats on both new and old buses would be viable countermeasures to deaths and injuries only if 100 percent use is assured. Past studies (1963) by the American Bus Association and FHWA's Bureau of Motor Carrier Safety on lap belt usage indicated that only 42 percent of the people utilized their lap belts for a portion of the trip, while only 25 percent utilized their belts for the whole trip. In a 1973 study by ABA and BMCS, only an average of 7.2 percent of the passengers utilized their lap belts for the entire trip. "Clearly, 100 percent usage would be unrealistic given the data from the above studies," FHWA said.

FHWA is reconsidering some matters, noting that it may be feasible from the safety benefit/cost point of view to require installation of safety lap belts in certain specific passenger seat locations. The IRPS report states that a cost/benefit ratio of one could be achieved by having lap belts at the first eight positions of the front of the bus (i.e., the first two rows), if 47 percent of the passengers in these selected seats wear restraints. Cumulative benefits would be expected to exceed cumulative costs in 10 years if one considered retrofitting both old buses and equipping new buses with lap restraints in these selected positions. Although the IRPS report did not consider the back row aisle seat, some sort of protection may be necessary since this seat has no seat back, in front thereof, for protection. FHWA intends to publish a notice in the Federal Register in the next few weeks to solicit comments and information concerning the merits of initiating rulemaking to require lap seat belts at selected locations.

H-78-40 and 41.—FHWA's letter of April 17 responds to the Safety Board's inquiry of January 29 (44 FR 18751, March 29, 1979) regarding data relevant to the commercial driver population. The recommendations were issued following investigation of the truck-trailer/van collision near Marion, N.C., May 12, 1977, and called on FHWA to establish a procedure that will serve to identify all carriers, vehicles, and drivers under FHWA jurisdiction and to inform all carriers and drivers of their responsibilities in regard to the Federal Motor Carrier Safety Regulations (FMCSR).

FHWA estimates that about one-half of some 4 million drivers in interstate commerce are employed by authorized carriers. There are approximately 200,000 owner/operators leased to authorized carriers. The FMCSR are served only to owner/operators who are carriers in their own right, and about 35,000 have been so served. FHWA reports that as of March 10, 1979, there were 154,394 motor carriers operating in interstate commerce; of these, 140,620 had 10 vehicles or less. FHWA has no further breakdown for less than 10 vehicles. FHWA estimates that the majority of carriers employ more than one driver.

The Safety Board's interest in striving to create a greater awareness of FMCSR is shared by FHWA. FHWA notes that one effort to achieve this is its safety inspection and weighing program which will be activated later in 1979 and will involve one or more States. FHWA believes that State agencies can enhance the Bureau of Motor Carrier Safety program implementation.

H-78-62.—Letter of April 19 from FHWA is in response to the Safety Board's March 13 comments on FHWA's initial response dated February 7, (44 FR 15818, March 15, 1979) concerning the implementation of recently developed concepts for traffic safety and control in urban street and highway work zones. The recommendation resulted from investigation of the tractor-semitrailer/multiple vehicle collision and override on I-285, Atlanta, Ga., June 20, 1977.

The Safety Board, noting FHWA's ongoing research and development

Project 1Y, "Traffic Management in Construction and Work Zones," asked to be provided with examples of recent or planned future implementation of research findings that are specifically tailored to urban driver information needs.

FHWA's response notes that recent reviews by FHWA personnel have indicated that high-volume highways are more likely to have work zone safety deficiencies than low-volume highway projects. FHWA says that a number of activities have been pursued to resolve problems with work zone safety. Project 1Y contains a specific effort entitled "Determination of Driver Needs in Work Zones," a human factors approach. FHWA is funding a study in Texas entitled "Traffic Management During Urban Freeway Maintenance Operations." FHWA lists six other study and handbook efforts that will impact urban and high-volume work zone activities.

Marine

M-78-10 through 12.—Letter of May 2 from the U.S. Coast Guard responds to the Safety Board's March 15 comments on USCG's previous response forwarded January 29 (44 FR 12786, March 8, 1979). The recommendations were issued following investigation into the sinking of the SS EDMUND FITZGERALD in Eastern Lake Superior, November 10, 1975.

With respect to recommendations M-78-10 and 11, which asked USCG to "insure" hatch weathertightness during various inspections and that unseaworthy vessels be prevented from sailing or restricted in their operations, the Safety Board noted that USCG has initiated action that will insure that these conditions have been met in the Ninth Coast Guard District. Accordingly, the Board has classified these recommendations as "closed—acceptable action." The Board expressed the hope that the significant improvement in weathertightness is a firmly established trend.

With reference to M-78-12, which called on USCG to report on inspection and sailing restriction activities, the Safety Board on March 15 asked USCG for a report covering a 2-year period of hatch cover inspections made of Great Lakes Bulk Cargo Vessels and the number of times these inspections resulted in vessels being delayed or prevented from sailing. The Board also wanted to know how many hatch inspections were made and sailing changed during the period when the Ninth Coast Guard District Commander used the word "frequently" to describe the lack of weathertightness found during inspections.

In its May 2 response, USCG said that it has chosen a policy of prevention in lieu of detention of vessels in order to improve overall hatch cover weathertightness. Following the SS EDMUND FITZGERALD sinking, USCG implemented a mandatory hose test to insure the weathertight integrity of all Great Lakes bulk cargo vessel hatch covers. This test is conducted annually aboard every bulk carrier during the spring "fit-out" inspection. No vessel is certificated by the Coast Guard unless all hatch covers are satisfactorily weathertight. Subsequently, approximately 50 percent of all vessels are examined again for hatch cover weathertightness as a part of the "pre-November" riding inspection in anticipation of winter operations. The 1977 and 1978 "fit-out" inspections indicated all of the certificated vessels inspected were in full compliance with weathertight standards. During the 1978 "pre-November" riding inspections only three vessels were required to slightly alter sailing schedules to correct deficiencies.

Further, USCG states, every attempt is made by the Commander, Ninth Coast Guard District, when selecting vessels to schedule for riding inspections to identify and inspect those vessels with a history of weathertight deficiencies. Also, other vessels are selected in an attempt to provide a biennial riding inspection for each Great Lakes bulk carrier.

M-78-35 through 44.—Coast Guard's letter of April 18 is in answer to the Safety Board's comments of January 23 relative to response of last October 31 (43 FR 55023, November 24, 1978) concerning recommendations developed as a result of investigation of the explosion of the M/T ELIAS at Fort Mifflin, Pa., April 9, 1974.

Recommendation M-78-35 asked Coast Guard to implement communications practices to insure that pilots, ship operating agents, terminal operators, and port firefighting authorities are informed of potentially hazardous ship movements. The Safety Board noted Coast Guard's attempt to modify its regulations to obtain more relevant information about vessels with hazardous conditions before they enter a port. The Board's concern is what the Coast Guard will do with this information once it is received, since Coast Guard's October 31 response did not address the basic problem of communications. The Board's January 23 letter suggests that the Coast Guard establish appropriate guidelines for individual Captains of the Port (COPT) prescribing what hazardous condition information should be shared with local interested parties. Coast Guard's April 18 letter indicates publication of a final rule concerning Notification Requirements for Vessel Arrivals, Departures, Hazardous Conditions and Certain Dangerous Cargoes by June 1979. Coast Guard states that decisions concerning dissemination of information, particularly on hazardous conditions, are best determined by each COPT, due to significant differences among port areas, constituencies, jurisdictions, transit routes, destination of each vessel and the exact nature of each hazardous condition reported to the COPT. However, Coast Guard is developing servicewide guidelines for consideration by the COPT in disseminating this type of information.

With respect to M-78-36, which asked Coast Guard to improve the promptness and effectiveness of boarding and special investigative procedures on tank vessels and review adequacy of checklists to detect potentially hazardous shipboard conditions, the Board was pleased to learn that the notification requirements discussed in Coast Guard's October 31 response will be used to increase the promptness and effectiveness of boardings and that a policy directive was issued in April 1978 concerning boarding inspections to ensure that previously required repairs have been made. The Board requested a copy of that policy directive. Coast Guard's April 18 letter advised that a new "Tankship Hull Inspection Book," CG-840S, has been developed and is now in use. This book contains guidelines for conducting inspections and examinations of U.S. and foreign flag crude oil, product, chemical, and liquefied gas tank vessels.

The Safety Board advised that recommendation M-78-37 is now considered "closed-acceptable action," having noted that Coast Guard action to incorporate casualty information from Lloyd's and from search and rescue reports is considered satisfactory. The Board suggested that questionable ship deficiency information might be incorporated in the Marine Safety Information System and verified at the earliest Coast Guard boarding.

Recommendation M-78-38 called for a plan review program relative to construction of new port terminals that evaluates the protection of firefighting systems to minimize damage or loss resulting from explosion and to insure availability and effectiveness for firefighting. The Safety Board has formally commented on Coast Guard's advance notice of proposed rulemaking for waterfront facilities and LNG facilities, and on January 23 asked to be supplied with a proposed schedule for completing the regulatory process on waterfront facilities. In response, Coast Guard says that the anticipated schedule for rulemaking on waterfront facilities calls for publication of a comprehensive proposal by July 1, 1979, which will respond to over 230 comments received from the advance notices on the subject. Coast Guard anticipates a final rule will be published in July 1980.

Coast Guard notes that action on recommendation M-78-39, which called for a study of positioning shipborne gangways and shoreplaced brows to provide for rapid personnel escape from vessels during emergencies, and M-78-40, which recommended regulations to control visitor movement through terminals to restrict their boarding of tankers that are not gas free or inerted, is addressed in the proposed rulemaking discussed in answer to recommendation M-78-38. The Safety believes strongly that the visitor warning requirement of 46 CFR 35.30-1 is not sufficient, even though a visitor may be under the direct supervision and responsibility of the master, an officer, or crewmember. A prospective visitor should be advised of the potential hazards on shipboard during cargo operations or whenever a vessel is not gas free so that he can decide whether he wants to go aboard.

With respect to recommendation M-78-41, the Safety Board has urged prompt action in studying the feasibility of providing safer means of escape from tankers across piers to safe terminal locations, to improve chances of survival for shipboard personnel when lifeboats cannot be used and swimming ashore is not possible. Coast Guard says that the "find a different approach" nature of this project has required much longer problem definition development than expected at the time of its October 31 response. Coast Guard is continuing to develop emergency equipment criteria and specifications to provide an escape route sought by this recommendation. Lifeboats that meet the requirements of M-77-35 as fire safe and totally enclosed have been approved under 46 CFR 160.035; the requiring of these boats is involved with revision of Chapter III of SOLAS 60. Coast Guard says that these lifesaving equipment changes, the tanker boarding program, and the structural and cargo system improvements now being implemented will decrease the possibility of casualties requiring use of extraordinary escape.

Recommendation M-78-42 called for modification of regulations governing designated waterfront facilities to require reporting of casualties and accidents to the Coast Guard, conforming to those specified for deepwater ports and artifical islands. Coast Guard reports publishing a proposed rule on January 25, 1979, concerning investigations of casualties on waterfront facilities. The comment period expired March 12 and responses are now being evaluated and a final rule will be prepared.

The Safety Board advised on January 23 that the publication of COMMANDANT INSTRUCTION 16711.4 dated February 16, 1978, fulfills the intent of recommendation M-78-43. The public pronouncement of policy concerning frequency and extent of examination of foreign flag tank vessels meets the requirements of this recommendation, which is now considered "closed—acceptable action."

In response to M-78-44, which recommended that Coast Guard require expeditious and thorough investigation of arriving tank vessels that might pose a threat to U.S. ports and waterways because of an on-board fire or casualty, at safety zones before permitting berthing in U.S. ports, Coast Guard notes that action on this recommendation is included in its efforts described above in response to M-78-36.

Pipeline

P-78-56.—IOn March 30 the Research and Special Programs Administration of the U.S. Department of Transportation forwarded a copy of Material Transportation Bureau's response dated November 27, 1978, not previously received by the Safety Board. The recommendation, which resulted from investigation into the asphyxiation of Oklahoma Natural Gas Co. workers in Oklahoma City, Okla, April 24, 1978, asked MTB to expedite its role in setting standards for gas company safety and health, promulgate necessary regulations, and coordinate all actions with the Occupational Safety and Health Administration to assure that regulations developed are compatible.

RSPA notes that the Secretary of Transportation requested in 1977 that each modal administrator provide views on DOT's relationship with OSHA. The policy developed was to allow each administration to adopt its own strategy based on needs and resources. MTB has decided that its resources will not allow an involvement with occupational safety and health. They have elected to have OSHA be the leaders with close coordination with OSHA.

Railroad

R-79-12 and 13.—The Bay Area Rapid Transit District (BART) on April 12 provided a response to recommendations issued following investigation of fire-caused fatality and damages on BART Train No. 117, at Oakland, Calif., January 17, 1979. The recommendations urged BART to include in its predispatching procedure an inspection of all undercar equipment covers to assure that such equipment covers are in place and properly secured (R-79-12) and to provide a suitable securement mechanism for all undercar equipment covers on BART's rolling stock (R-79-13). (See 44 FR 15817, March 15, 1979.)

BART reports that there are 31 undercar covers on a BART transit vehicle. Six covers are secured with pins and do not appear to require modification at this time. With the exception of the line switch box cover, the remaining covers are secured with two bolts. An assessment is currently underway to determine whether an additional locking device is required for two bolt covers. The line switch box cover (a contributing factor to the January 17, 1979 fire) is currently being modified, BART stated. A positive locking device is being installed which should ensure the security of the cover.

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of the recommendation letters issued by the Board, response letters and related correspondence are also available free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Mutliple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906))).

Margaret L. Fisher,

Federal Registration Liaison Officer.

May 14, 1979.

[FR Doc. 79-15420 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-59-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk(*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

Department of Agriculture

Agency Clearance Officer—Donald W. Barrowman—447-6202

Revisions

Animal and Plant Health Inspection Service
*Application and Agreement for Handling Restricted Imports or Animal Byproducts and Controlled Materials
VS 16-26 and VS 16-25
Annually
Importers; 250 responses; 125 hours
Charles A. Ellett, 395-5080

*Federal Crop Insurance Corporation
Field Inspection and Claim for Indemnity
FCI-74, 74-T-P-C, and 63-Apples
On occasion
Farmers; 70,000 responses; 17,500 hours
Charles A. Ellett, 395-5080

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

New Forms

Departmental and Other
Material Inspection and Receiving Report
DD 250 and 250C
On occasion
DOD Contractors; 1,500,000 responses; 1,125,000 hours
David P. Caywood, 395-6140.

Departmental and Other
Request for Authorization of Additional Classification and Rate
DD 1565
On occasion
Construction Contractor; 300 responses; 600 hours
David P. Caywood, 395-6140.

Departmental and Other
Production Progress Report
DD-375 and 375C
DOD Cont. Admin. Offices and DOD Contractors; 122,400 responses; 41,616 hours
David P. Caywood, 395-6140.

Departmental and Other
Termination Settlement Forms
DD 540 through 548, 831, and 832
Defense Contractors; 1,200 responses; 1,200 hours
David P. Caywood, 395-6140.

Revisions

Department of the Army
Motor Carrier Facilities Questionnaire
MT 45
On occasion
Transportation Industry; 375 responses, 375 hours
David P. Caywood, 395-6140.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Albert H. Linden—633-8477

New Forms

Regulations for Major Fuel Burning Installation
Exemptions
ERA-325R
Single time
New MFEI's; 173 responses; 69,200 hours
Jefferson B. Hill, 395-5867

Regulations for Powerplant Exemptions
ERA-324R
Single time
New powerplants; 186 responses; 74,400 hours
Jefferson B. Hill, 395-5867

Petition for Temporary Use of Natural Gas
ERA-316
Single time
Existing powerplants; 500 responses; 500 hours
Jefferson B. Hill, 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488

New Forms

Alcohol, Drug Abuse, and Mental Health Administration
Study of drug treatment in prison
Single time
State government employees; 184 responses; 80 hours
Office of Federal Statistical Policy and Standard, 673-7977

Public Health Service
Healthworks 1979 (health fair)
Single time
Participants in healthworks; 2,500 responses; 625 hours

Richard Eisinger, 395–3214
Public Health Service
Evaluation of synthetic estimates through a telephone survey
Other (See SF–83)
Households in Baltimore, SMSA; 2,500 responses; 1,250 hours
Office of Federal Statistical Policy and Standard, 673–7977
Public Health Service
Use of IPA Authority in the Public Health Service
Single time
Past and present IPA/PHS assignees; 251 responses; 83 hours
Richard Eisinger, 395–3214

Revisions

National Institutes of Health
Framingham Cohort Surveillance and Offspring Study
Single time
Framingham Heart Study Cohort and Offspring; 1,000 responses; 2,000 hours
Office of Federal Statistical Policy and Standard, 673–7977

Extensions

Alcohol, Drug Abuse and Mental Health Administration
Use of Annual Evaluation Report Review
Single time
Staff of Federal Funded CMECS W Eval. Reports Reviewed; 48 responses; 24 hours
Richard Eisinger, 395–3214
Alcohol, Drug Abuse and Mental Health Administration
Alcoholism Treatment Center Questionnaire
Quarterly
Alcoholism; 314,000 responses; 25,300 hours
Richard Eisinger, 395–3214
Food and Drug Administration
Application for Approval for Use of Methadone in a Treatment Program
FD 2632
On occasion
Clinics Treating Narcotic Addicts; 50 responses; 250 hours
Richard Eisinger, 395–3214
Food and Drug Administration
Medical Responsibility Statement for Use of Methadone in a Treatment Program
FD 2633
On occasion
Physicians Employed by Methadone Clinics; 200 responses; 100 hours
Richard Eisinger, 395–3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John T. Murphy—755–5190

Revisions

Administration (Office of Assistant Secretary)
Premium Reconcilement
HUD–239
On occasion
HUD approved financial institution; 100,000 responses; 75,000 hours
Arnold Strasser, 395–5080

Extensions

Housing Management
Operating Budget
HUD–52564, HUD–52566, HUD–52567, HUD–52571, HUD–52573
Annually
PHAS; 15,000 responses; 60,000 hours
Arnold Strasser, 395–5080

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

Revisions

Employment Standards Administration
*Application for Continuation of Death Benefit for Student
LS–266
On occasion
Parent or guardian of workmen's compensation survivor over 18; 50 responses; 25 hours
Arnold Strasser, 395–5080

Extensions

Employment and Training Administration
Payment Activities Under the Disaster Relief Act of 1974
MA5–32
On occasion
SESAS where major disasters occur; 600 responses; 600 hours
Arnold Strasser, 395–5080

COMMUNITY SERVICES ADMINISTRATION

Agency Clearance Officer—Jack Stoehr—254–5300

New Forms

Assessment of State Ecomonic Opportunity Offices
Single time
CAA Director, State Officials and Heads of State CAA Association; 611 responses; 347 hours
Barbara F. Young, 395–6132

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—John J. Stanton—245–3064

New Forms

Interim Policy: Premanufacture Notification
On occasion
Chemical manufacturers; 400 responses; 16,000 hours
Edward H. Clarke, 395–5867

GENERAL SERVICES ADMINISTRATION

Agency Clearance Officer—John F. Gilmore—566–1164

Extension

*Statement of Personal History (Security Questionnaire)
GSA 176
On occasion
Contract employees; 8,000 responses; 4,000 hours
Marsha D. Traynham, 395–6140

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—W. V. Radesk—312–751–4690

Extensions

*Notice of Cessation of Full-Time School Attendance
G–315
On occasion
Schools; 2,000 responses; 166 hours
Barbara F. Young, 395–6132

VETERANS ADMINISTRATION

Agency Clearance Officer—B. C. Whitt—389–2282

Revision

*Application for Refund of Educational Contributions
VA 4–5281
On occasion
Veterans and servicemen; 12,000 responses; 2,000 hours
David P. Caywood, 395–6140
Report of Income From Property or Business
21–4185
On occasion
Veterans, Dependents; 120,000 responses; 60,000 hours
David P. Caywood, 395–6140
50 Percent Employment Requirement Survey
VAF 22–8722, 22–8723, 22–8724
On occasion
Schools and State approving agencies; 375,000 responses; 650,000 hours

David P. Caywood, 395-6140

Stanley E. Morris,

Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-15473 Filed 5-17-79; 8:45 am]

BILLING CODE 3110-01-M

POSTAL SERVICE

Mail to Ireland (EIRE); Suspension of Private Express Statutes

Postal workers in Ireland (Eire) have been on strike since February, 1979. There has been no civil mail service to Ireland (Eire) from the United States since February 26, 1979.

In view of the protracted nature of the strike, the U.S. Postal Service has determined that it is in the public interest to suspend, and hereby does suspend, the operation of 39 U.S.C. 601(a) (1) through (6) and 39 C.F.R. 310.2(b) (1) through (6) so as to permit the carriage of letters destined for delivery in Ireland (Eire) without paying postage or meeting any of the other conditions in such provisions of law and regulation. Letters intended for destinations in Northern Ireland (counties of Antrim, Down, Londonderry, Armagh, Tyrone, and Fermanagh) are *not* affected by this suspension.

This suspension shall remain in effect until further notice.

(39 U.S.C. 401, 404, 601)

William F. Bolger,

Postmaster General.

[FR Doc. 79-15327 Filed 5-14-79; 12:31 pm]

BILLING CODE 7710-12-M

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND

Meetings

In accordance with the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following meetings:

Name: President's Commission on the Accident at Three Mile Island.

Place: Washington, D.C., site to be announced.

Time: Wednesday, May 30, 9:00 a.m.-6:00 p.m.; Thursday, May 31, 9:00 a.m.-6:00 p.m.; Friday, June 1, 9:00 a.m.-6:00 p.m.

Wednesday, June 13, 9:00 a.m.-6:00 p.m.; Thursday, June 14, 9:00 a.m.-6:00 p.m.; Friday, June 15, 9:00 a.m.-12:00 noon.

Proposed Agenda:

I. Testimony of witnesses

II. Discussion of future Commision activities

The Commission was established by Executive Order 12130 on April 11,1979, to conduct a comprehensive study and investigation of the recent accident involving the nuclear power facility on Three Mile Island in Pennsylvania.

The meetings are open to the public. Inquiries should be addressed to Barbara Jorgenson (202/653-7677).

Barbara Jorgenson,

Public Information Director.

May 15, 1979

[FR Doc. 79-15633 Filed 5-17-79; 8:45 am]

BILLING CODE 6820-AJ-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15815 File No. SR-NYSE-79-15]

New York Stock Exchange, Inc.; Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 2, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

NYSE's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE") rule as amended would provide: that a member organization which carries customer accounts shall not expand or must reduce its business if for more than 15 consecutive business days the conditions described in Rules 326(a) or (b) exist. An additional five (5) business days will be allowed if 15 consecutive business days have already passed before the date of discovery and notice to the Exchange before implementation of the restrictions imposed under these rules.

NYSE's Statement of Purpose

The rules prescribe that when certain conditions exist for more 15 consecutive business days, a member organization that carries customer accounts is restricted from expanding its business or is required to reduce its business. If due to unusual circumstances the existence of a prescribed condition is discovered after it has existed for more than 15 business days, the organization cannot implement its expansion plans or must reduce its business even though the condition can be readily corrected.

This can be a harsh penalty and application of the restrictions to a member organization that is listed on an exchange would require public notice and could disrupt the market in the organization's securities. In the interest of public shareholders, time should be allowed if the condition can be readily corrected.

The proposed amendments would allow the member organization and the Exchange five days after discovery to take remedial action.

NYSE's Statement of Statutory Basis

The proposed amendments to Rules 326(a) and (b) are consistent with Sections 6(b)(1), (5) and (8) of the Act as follows:

(i) The waiver period of up to five (5) business days from the date of discovery under certain unusual circumstances enables the Exchange to comply and enforce compliance by its members with the requirements of Section 6(c)(3)(A)(i) of the Act.

(ii) Inapplicable.

(iii) Inapplicable.

(iv) Inapplicable.

(v) The proposed rule amendments will provide for protection of investors and of the public interest.

(vi) Inapplicable.

(vii) Inapplicable.

(viii) Inapplicable.

Comments Received From Members, Participants, or Others on Proposed Rule Changes

No comments were solicited or received with respect to the proposed rule changes.

Burden on Competition

There will be no burden on competition.

On or before June 25, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes,

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection in the

Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 18, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

May 14, 1979.

[FR Doc. 79-15421 Filed 5-16-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15813; File No. SR-PSE-79-5]

Pacific Stock Exchange Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 23, 1979, the above-mentioned self-regulatory organization filed with the securities and exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend its current fee schedule. The Amendment reflects changes in the schedule of rates of certain options and equities transactions. The text of the fee schedule describing these changes is set forth below:

a. Eliminate the badge fees of $40.00 per month for members of the options floor and $10.00 per month for ancillary personnel on the options floor.

b. Increase the options trade comparison charge from $.25 to $.28 per trade entry ticket.

c. increase the equity transaction fee schedule as follows:

1. From $.1375 to $.14 per $1,000 on the first $10 million per month;
2. From $.088 to $.10 per $1,000 on amounts over $10 million but under $50 million per month;
3. From $.066 to $.08 per $1,000 on amounts over $50 million per month.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows: Badge fees on the options floor were adopted to help defray the initial costs of implementing the PSE's options program. These costs have been recovered and the badge fees are no longer needed. The proposed increase in PSE comparison charges and transaction fees are intended to generate additional revenues to meet rising expenses. The increase is consistent with increased expenses incurred by PSE in connection with the transactions that are subject to the increase.

The proposed rule change, by changing the fees chargeable against members for certain transactions, reflects the increased expenses of the PSE and relates to the equitable allocation of fees among its participants. Prior to this proposed rule change, a badge fee was charged to members of the options floor but not to members of the equity floor.

Comments Received From Members, Participants, or Others on Proposed Rule Change

No comments were solicited or received from members, participants or others on the proposed amendments.

Burden on Competition

The PSE has determined that no burden on competition will be imposed by the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 7, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

May 11, 1979.

[FR Doc. 79-15420 Filed 5-16-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15812 File No. SR-PSE-79-4]

Pacific Stock Exchange Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) (the "Act"), notice is hereby given that on April 25, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is a stated policy of the Pacific Stock Exchange Incorporated ("PSE") which provides for COMEX [1] round lot market orders to be priced based on best bid (for sell orders) and best ask (for buy orders) as determined by quotes received from all markets participating in the Intermarket Trading Systems ("ITS") for ITS securities, and by American Stock Exchange, New York Stock Exchange, and PSE quotes for securities not traded in ITS.

PSE's Statement of Basis and Purpose

The proposed rule change is designed to provide automated executions of market orders based upon current quotes. PSE believes that by basing executions on current quotes, rather than on prints, the execution will better reflect current market conditions. Brokerage firms which have been contacted by PSE regarding this change have indicated that they view the change as a major enhancement to the COMEX system, and that the change makes COMEX more attractive. The proposed rule change will thus assist PSE in becoming a more effective competitor within the national market system.

The proposed rule change, by improving the operation of the COMEX system, will make the PSE a stronger competitor within the national market system, and thus will contribute to removal of impediments to and perfection of the mechanism of a free

[1] The COMEX system provides for automated execution of market orders, with a maximum of 300 shares per order, in certain dually-traded stocks.

and open market and a national market system. Additionally, by providing quality executions in an efficient manner for small orders (300 shares or less) the proposed rule change contributes to the protection of investors and of the public interest. Accordingly, the PSE cites Section 6(b)(5) of the Act as the statutory basis for this proposed rule change.

Comments Received From Members, Participants, or Others on the Proposed Rule Change

PSE has discussed the proposed change in the COMEX pricing formula with several retail brokerage firms to determine if the change would enhance their interest in use of the COMEX system. The proposed change has been supported by all firms with which PSE has held such discussions, and PSE believes several firms will commence sending orders to COMEX, or increase the number of orders they presently send to COMEX, as a result of the proposed change. In addition, the proposed change was approved by the Floor Trading Committee of PSE and was discussed with every specialist on PSE. PSE believes the proposed rule change has the support of every PSE specialist.

Burden on Competition

The PSE asserts that the proposed rule change does not impose any burden on competition. By strengthening the COMEX system of automated execution, the proposed rule change strengthens the ability of PSE, and of PSE specialists, to compete in the developing national market system.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested pesons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before June 7, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

May 11, 1979.

[FR Doc. 79-15422 Filed 5-16-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/195]

Ocean Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Ocean Affairs Advisory Committee will meet at 10 a.m. on Tuesday, June 19, 1979 in Room 6320 of the Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic Affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson.

As access to the Department of State is controlled, persons wishing to attend the June 19 meeting of the Antarctic Section of the Ocean Affairs Advisory Committee should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 6320.

The Ocean Affairs Advisory Committee will also meet on Monday, June 18, 1979 at the National Academy of Sciences Building, 22nd and C Streets, N.W. in sessions which will not be open to the public. These sessions will be devoted to the discussion of classified material under 5 U.S.C. 552b(c)1 and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purposes of these discussions will be to elicit views concerning the further development of Antarctic mineral resource policies and to review ongoing Antarctic marine living resource negotiations. Other matters and issues relating to the Antarctic which will be considered at the Tenth Antarctic Treaty Consultative Meeting will also be reviewed. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12065.

Requests for further information on the meetings should be directed to R. Tucker Scully or Lisle Rose of OES/OFA/OPA, Room 5801, Department of State. They may be reached by telephone on (202) 632-3262.

Dated: May 8, 1979.

Benoit Brookens,

Executive Secretary.

[FR Doc. 79-15418 Filed 5-16-79; 8:45 am]

BILLING CODE 4710-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-79-5]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 6, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 10, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
19148	Capt. Eugene Lore	14 CFR 121.383(c)	To permit petitioner to serve as a pilot for Trans World Airlines after he has reached his 60th Birthday.
19149	United States Parachute Association	14 CFR 105.43	To permit foreign nationals to participate in the national parachuting championships without complying with the equipment and packing requirements of Section 105.13.
19150	Mr. Jack Valenti	14 CFR 135.149(c)(1)	To permit operation of its Citation aircraft N 50WM without a third altitude gyroscopic indicator.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
19113	Capitol International Airways, Inc.	14 CFR § 121.3, 121.105, 121.443, 121.465, 121.533, and 121.535.	To permit petitioner to operate scheduled passenger service pursuant to the rules applicable to supplemental air carriers. *Partial grant 5/4/79.*

[FR Doc. 79-15372 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[Docket No. RFA 511-78-1]

Coal Line Project; Extension of Public Comment Period

The Federal Railroad Administration ("FRA"), Department of Transportation, in response to requests for additional time for public comments on the revised coal line application filed by the Chicago and North Western Transportation Company and its wholly-owned subsidiary, Western Railroad Properties, Inc. for $230,511,000 in loan guarantees under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 831, hereby extends the public comment period from May 11, 1979 to June 11, 1979. A detailed description of the original project was presented in the notice of receipt of the application, 43 FR 41126 (September 14, 1978), and a description of the revised project was published in a notice of application amendment, 44 FR 5041 (January 24, 1979).

Written comments should be submitted to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, not later than the comment closing date of June 11, 1979. Submissions should indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor. The comments will be taken into consideration by the FRA in evaluating the application; however, formal acknowledgement of the comments will not be provided. Comments received after June 11 will be considered to the extent practicable.

To the extend permitted by law, the application will be made available for inspection during normal business hours in Room 5415 at the above address of the FRA in accordance with the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations. The FRA has neither approved nor disapproved this application nor has it passed upon the accuracy of the information contained therein.

(Sec. 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Issued in Washington, D.C. on May 10, 1979.

Comment closing date: June 11, 1979.

Charles Swinburn,

Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc. 79-15406 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Safety, Bumper, and Consumer Information Programs; Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on Wednesday, June 20, 1979, to answer questions from the public and industry regarding the Agency's safety, bumper, and consumer information programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m., if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Motor Vehicle Environmental Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

This is another of a series of public technical meetings modeled after those conduced by the Environmental Protection Agency (EPA) for its motor vehicle emissions program. At the June 20 meeting, representatives of DOT will answer questions received in writing from the industry and the public relating to NHTSA's vehicle safety, bumper, or consumer information programs which are technical, interpretative or procedural in nature. The questions may relate to the research and development, rulemaking, or enforcement (including defects) phases of these activities. (Questions regarding this Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions.)

Questions for the June 20 meeting must be submitted in writing by June 4 to William Marsh, NHTSA Executive Secretary, Room 5221, 400 Seventh Street, SW., Washington, D.C. 20590. Every effort will be made to answer appropriate questions received. Questions received after the June 4 date may be answered at the meeting if sufficient time is available and a person from DOT knowledgeable in the subject matter is present. The idividual, group, or company submitting a question does not have to be present for the question to be answered. A consolidated list of questions submitted by June 4 will be available at the meeting and this list will serve as the agenda.

A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within four weeks after the meeting. Copies of the transcript will be available in four to five weeks at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA, Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

Succeeding meetings will be held on August 15, October 10 and December 12, 1979.

Issued in Washington, D.C., on May 9, 1979.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 79-15083 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP79-5; Notice 1]

Uniroyal Tire Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Uniroyal Tire Company of Detroit, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6.5 requires that the information specified in each of its subparagraphs be marked on each sidewall. Among this information is the maximum load rating and corresponding inflation pressure (subparagraph (d)), the word "tubeless" or "tube type" as applicable (subparagraph (g)), and the letter disignating the tire load range (subparagraph (j)). A labeling mold plate containing this information fell out of the mold and went unnoticed during the curing of 200 tires. Instead of the above information, the words "10 Ply Rating" were molded in. Uniroyal would like to buff off the words "10 Ply Rating" and brand in "Load Range F", to minimize the possibility that someone would be misled into using a lower inflation pressure suitable for a 10 ply ratng tire (The correct rating is "10 Ply Sidewall 8 Ply/12 Ply Rating.")

Uniroyal argues that its noncompliance is inconsequential for the following reasons: the error occurred on the sidewall of the tire that does not contain the tire's serial number, and all required information does appear on the serial number side. Omission of "tube type" on one sidewall would not create a hazard as there is no tubeless rim in this size and the tube type rim has a slot that is too large for a tubeless valve to fill. Finally, omission on the inflation pressure is not important since it appears on the other side of the tires in question.

Interested persons are invited to submit written data, views and arguments on the petition by Uniroyal Tire Co. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated bleow.

Comment closing date: June 18, 1979.

(Sec. 102, Pub. L. 93-492, 99 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 9, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-15143 Filed 5-16-79; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Marine Radar Systems From the United Kingdom; Antidumping, Withholding of Appraisement Notice

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a tentative determination that certain marine radar systems from the United Kingdom are being sold at less than fair value within the meaning of the Antidumpting Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Appraisement for the purpose of this merchandise will be suspended for 6 months. Interested persons are invited to comment on this action.

EFFECTIVE DATE: May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Leon McNeill, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202/566-5492).

SUPPLEMENTARY INFORMATION: On October 12, 1978, a petition in proper form was received pursuant to section 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of Raytheon Marine Company, Manchester, New Hamsphire, alleging that certain marine radar systems from the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.)* (referred to in this notice as the "Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the Federal Register of November 6, 1978 (43 FR 51744).

For purposes of this notice "certain marine rader systems" means X-band radar systems provided for in item 685.60, Tariff schedules of the United States, designed principally for boat or ship installation with direct current power supply from 6 to 60 volts, having a maximum viewable display dimension of less than 11 inches, and having an antenna assembly with transmitter-receiver permanently affixed, and parts thereof; all the foregoing, whether such radar system components are imported together as units or separately.

Tentative Determination of Sales at Less Than Fair Value

On the basis of the information developed in the Customs investigation and for the reasons noted below, pursuant to section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)), I hereby determine that there are reasonable grounds to believe or suspect that the exporter's sales price of certain marine radar systems from the United Kingdom is less, or likely to be less, than the fair value, and thereby the foreign market value, of such or similar merchandise.

Statement of Reasons on Which This Determination Is Based

a. *Scope of Investigation.* It appears that approximately 88 percent of the imports of the subject merchandise from the United Kingdom are manufactured by Decca Radar Limited (DRL). Therefore, the investigation has been limited to this manufacturer.

b. *Basis of Comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis for comparison appears to be between the exporter's sales price and the home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163) was used since all export sales to the United States were made to a related importer who resold the merchandise subsequent to its importation. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide an adequate basis for comparsion.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning exports and home market sales during the period June 1, 1978 through November 30, 1978.

c. *Exporter's Sales Price.* For the purposes of this tentative determination, the exporter's sales price has been calculated on the basis of the resale prices to unrelated United States customers. Adjustments have been made for ocean freight, marine insurance, discounts where applicable, United States Customs duty, brokerage, United States inland freight, warranty charges, rebates, where applicable, and selling and administrative expenses incurred in the United States.

Adjustments for ocean freight, marine insurance, duty, brokerage and inland freight were made pursuant to section 204(1) of the Act since these costs and charges incident to bringing the merchandise from the place of shipment in the United Kingdom to the place of delivery in the United States. The selling and administrative expenses incurred in the United States were deducted as charges incurred in the resale of the merchandise, pursuant to section 204(3) of the Act.

d. *Home Market Price.* For the purpose of this tentative determination, the home market price was calculated on the basis of the selling price to unrelated purchasers in the home market. Deductions were made for inland freight, discounts, where applicable, insurance, warranty and selling expenses.

The selling expenses claimed in the home market were deducted as an offset not to exceed the amount of the selling and administrative expenses incurred in the United States market. This is in accordance with 153.10(b), Customs Regulations (19 CFR 153.10(b)).

e. *Voluntary Submission.* Information was received voluntarily from Electronic Laboratories Ltd., another U.K. manufacturer of marine radar systems. The information was inadequate for an analysis to be performed for this determination. Further information has been requested from this manufacturer so an analysis can be performed prior to the final determination in this case.

f. *Result of Fair Value Comparisons.* Using the above criteria, preliminary analysis suggests that exporter's sales price was less than the adjusted home market price of such or similar merchandise. Comparisons were made on 100 percent of the subject marine radar systems sold in the United States by DRL during the period of investigation. Margins were found ranging from 0.17 to 22 percent for these sales. The weighted average margin over all sales compared amounted to 2.72 percent.

Accordingly, Customs officers are being directed to withhold appraisement of certain marine radar systems from the United Kingdom in accordance with section 153.48, Customs Regulations (19 CFR 153.48).

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be submitted to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office no later than June 1, 1979. Such requests must be accompanied by a statement outlining the issues to be discussed. These issues may be discussed in greater detail in a written brief.

All written views or arguments should likewise be submitted to the Commissioner of Customs in ten copies in time to be received in his office no later than June 18, 1979. All persons submitting views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and the respondent are also requested to serve all written submissions on all other counsel, including non-confidential summaries or approximated presentations of all confidential information.

This notice, which is published pursuant to section 153.35(b), Customs Regulations (19 CFR 153.35(b)), shall become effective on May 17, 1979. It shall cease to be effective 6 months from the date of publication, unless previously revoked.

Robert H. Mundheim,
General Counsel of the Treasury.
May 10, 1979.

[FR Doc. 79-15412 Filed 5-16-79; 8:45 am]
BILLING CODE 4810-22-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-No. 1F)]

Consolidated Rail Corp.; Abandonment Near Williamsville and North Tonawanda in Erie County, NY; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 2, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.-Abandonment Goshen* —— I.C.C. —— decided February 9, 1979, and further that Conrail shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by the Consolidated Rail Corporation of its line of railroad known as the Niagara Falls Branch (also known as the Williamsville Industrial Track) extending from railroad milepost 442.6 near Williamsville to milepost 448.5, near No. Tonawanda, a distance of 5.9 miles, in Erie County, NY. A certificate of public convenience and necessity permitting abandonment was issued to the Consolidated Rail Corporation. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than June 1, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective July 2, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15431 Filed 5-16-79; 8:45 am]

BILLING CODE 7035-01-M

ICC Senior Executive Service Performance Review Board

May 4, 1979.

The purpose of this Notice is to establish a Performance Review Board (PRB) and appoint its membership.

The Civil Service Reform Act of 1978 requires each agency to establish one or more PRB's. The PRB will make recommendations to the Chairman, this agency's appointing authority, on performance ratings (Sec. 4314 of Chapter 43, Title 5 U.S.C.) and performance awards (Sec. 5384 of Chapter 53, Title 5, U.S.C.) in the Senior Executive Service (SES). The Chairman shall issue performance appraisals after considering the recommendations of the PRB. (Sec. 4314 (c)(3), Chapter 43, Title 5, U.S.C.) Membership of the PRB must include a majority of SES career appointees where a career executive evaluation is being reviewed (Sec. 4314 (c)(5), Chapter 43, Title 5, U.S.C.).

Effective July 13, 1979, a five member PRB is established at the Interstate Commerce Commission. The Board will be comprised of three principal members and two alternate members. The three principal members are: Mark L. Evans, General Counsel; James B. Thomas, Jr., Director, Bureau of Accounts; and Martin E. Foley, Director, Bureau of Traffic. The two alternate members are: Robert M. Glennon, Chief Administrative Law Judge, Office of Hearings, and Alan M. Fitzwater, Director, Office of Proceedings.

The PRB will implement and maintain its senior executive rating program in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

A. Daniel O'Neal,

Chairman.

[FR Doc. 79-15428 Filed 5-16-79; 8:45 am]

BILLING CODE 7035-01-M

[No. AB-36 (Sub-No. 2); Finance Docket No. 28250 [1]]

Oregon Short Line Railroad and the Union Pacific Railroad Co.—Abandonment Portion, Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho; New York Dock Railway—Control—Brooklyn Eastern District Terminal

AGENCY: Interstate Commerce Commission.

ACTION: Policy clarification.

SUMMARY: The purpose of this document is to clarify the Commission's position regarding the applicability of recent decisions concerning the level of employee protection to be imposed in rail abandonments and rail proceedings under 49 U.S.C. 11343.

EFFECTIVE DATE: Effective May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202-275-7245.

SUPPLEMENTARY INFORMATION: In separate decisions in these proceedings, both served February 23, 1979, the Commission determined the appropriate level of employee protection to be imposed in the usual rail abandonment proceedings under 49 U.S.C. 10903 and the usual rail proceedings under 49 U.S.C. 11343 *et. seq.* (except trackage rights and leases proceedings), respectively.

[1] This decision embraces Finance Docket No. 28294, *New York Dock Railway—Securities.*

As a result, the conditions set forth in No. AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment—Goshen* will apply in all the usual rail abandonment proceedings and those set forth in Finance Docket No. 28250, *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* will apply in all the usual rail proceedings under 49 U.S.C. 11343 *et. seq.* (except trackage rights and lease cases). The appropriate conditions will be imposed automatically in all the pertinent rail proceedings pending before the Commission on the date the new policy was announced (i.e. February 23, 1979), as well as in all the pertinent rail proceedings filed subsequent to that date. Proceedings will be deemed pending before the Commission on February 23, 1979, if an administratively final decision, as defined in 49 U.S.C. 10327, had not been rendered as of that date. Parties to unconsummated abandonment cases in which administratively final decisions were not issued by August 18, 1977, may petition for the *Oregon III* conditions within 30 days from the service date of this notice. The *Oregon III* conditions will not normally be applied to consummated cases, since we do not plan to reopen abandonments to impose the expanded notice and negotiation provisions. Nevertheless, in extraordinary situations, parties to consummated abandonment cases that were not administratively final on August 18, 1977, may also petition by the same date for imposition of *Oregon III* conditions. Special justification must be shown in these cases. Furthermore, parties should indicate specifically which *Oregon III* conditions, if any (other than the preconsummation conditions), would be suitable after consummation.

Dated: May 2, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioners Stafford and Gresham Dissenting in part. Commissioners Stafford and Gresham would not impose new labor conditions on applications filed before February 5, 1976.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15429 File 5-16-79; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 16]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, and Interstate Applications

Dated: May 2, 1979.

Petitions for Modification, Interpretation, or Reinstatement of Operating Rights Authority

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247)* and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 59323 (M1F), filed November 13, 1978. Petitioner: BAY MOTOR EXPRESS INC., 400 Corporate Drive, Mahwah, NJ 07430. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds a certificate of public convenience and necessity in MC 59323, issued September 7, 1962, authorizing transportation as a *common carrier* by motor vehicle of *general commodities,* with the usual exceptions, (1) between points in Passaic, Bergen, Hudson, Essex, Union, Middlesex, Morris, Sussex, Somerset, and Monmouth Counties, NJ, on the one hand, and, on the other, New York, NY, (2) between New York, NY on the one hand, and, on the other, points in Rockland and Westchester Counties, NY, and (3) between points in Nassau and Suffolk Counties, NY. BY the instant petition, petitioner seeks to modify the territorial description to read as follows: (1) Between points in Passaic, Bergen, Hudson, Essex, Union, Middlesex, Morris, Sussex, Somerset, Monmouth, Warren, Hunterdon, Mercer, Burlington, and Ocean Counties, NJ; Rockland, Westchester, Putnam, Orange and Dutchess Counties, NY, on the one hand, and, on the other, New York, NY and points in Nassau and Suffolk Counties, NY. (2) Between points in Nassau and Suffolk Counties, NY, and (3) Between points in Rockland and Westchester Counties, NY, on the one hand, and, on the other, points in Passaic, Bergen, Hudson, Essex, Union, Middlesex, Morris, Sussex, Somerset, Monmouth, Warren, Hunterdon, Mercer, Burlington, and Ocean Counties, NJ.

MC 108393 (Sub-126 (M1F)), filed January 2, 1979. Petitioner: SIGNAL DELIVERY SERVICE, INC., 201 East Ogden Avenue, Hinsdale, IL 60521. Representative: Edward F. Schiff, 1100 Madison Office Bldg., 1155 15th Street, NW., Washington, DC 20005. Petition holds motor *contract carrier* Permit in MC-108393 Sub-No. 126, issued July 10, 1978, authorizing transportation over irregular routes, as pertinent, transporting *such merchandise* as is dealt in by retail department stores and mail order houses, and *equipment, materials, and supplies* used in the conduct of such business (except commodities in bulk, in tank vehicles), and moving from or to the facilities of Sears, Roebuck and Co., and TFCA, between points in ME, NH, VT, NY, MA, CT, RI, PA, NJ, MD, DE, OH, VA, WV, DC, AR, FL, GA, KY, LA, MS, AL, NC, SC, TN, IL, IN, MI, WI, CO, IA, KS, MO, NE, OK, WY, and Minneapolis-St. Paul, MN, and Dallas, TX, restricted (1) to the transportation of shipments which move to, from, or through two or more of the following cities: Atlanta, GA, Boston, MA, Chicago, IL, Columbus, OH, Dallas, TX, Greensboro, NC, Jacksonville, FL, Kansas City, MO, Memphis, TN, Minneapolis-St. Paul, MN, Philadelphia, PA, North Bergen, NJ, and St. Louis, MO, (2) under continuing contracts with Sears, Roebuck and Co., of Chicago, IL. By the instant petition, petitioner seeks to modify the base territory by deleting restriction (1) above.

MC 117503 (Sub-10 (M1F)), filed December 5, 1978. Petitioner: HATFIELD TRUCKING SERVICE, INC., 1625 North C Street, Sacramento, CA 95814. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. Petitioner holds motor *common carrier* certificate in MC-117503 Sub-10, issued August 15, 1977, authorizing as pertinent, transportation over regular routes of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, livestock, motor vehicles, and those which require the use of special equipment) over the following regular routes: (1) Between Williams, California, and Sacramento, California, serving all intermediate points—From Williams over Interstate Hwy 5 to Sacramento, and return over the same route. (2) Between Marysville, California, and Modesto, California, serving all intermediate points—From Marysville over California Hwy 99 to Modesto, and return over the same route. (3) Between Marysville, California, and Roseville, California, serving all intermediate points—From Marysville over California Hwy 65 to Roseville, and return over the same route. (4) Between Williams, California, and Marysville, California, serving all intermediate points—From Williams over California Hwy 20 to Marysville, and return over the same route. (5) Between Sacramento, California, and Placerville, California, serving all intermediate points—From Sacramento over U.S. Hwy 50 to Placerville, and return over the same route. (6) Between San Francisco, California, and Auburn, California, serving all intermediate points—From San Francisco over Interstate Hwy 80 to Auburn, and return over the same route. (7) Between Pinole, California, and Stockton, California, serving all intermiediate points—From Pinole over California Hwy 4 to Stockton, and return over the same route. (8) Between San Francisco, California, and Stockton, California, serving all intermediate points—From San Franscico over Interstate Hwy 580 to junction Interstate Hwy 205, thence over Hwy 205 to junction Interstate Hwy 5, thence over Interstate Hwy 5 to Stockton, and return over the same route. Serving as off-route points in connection with routes (1) through (8) above: (a) The Sierra Ordnance Depot, at or near Herlon, California; (b) points in Alameda, Amador, Contra Costa, Marin, Sacramento, San Joaquin, San Mateo, Solano, Sutter, and Yolo Counties, California; (c) the points of Biggs, Palermo, Bangor, and Griedley, in Butte County, California; and (d) those points in Santa Clara County, California, on and north of California Hwy 130, and Interstate Hwy 280, and those points in Yuba County, California, on and south of an unnumbered State Hwy extending from Comptonville through Dobbins and extending to Bangor in Butte County as far as the intersection with Yuba-Butte County boundary line. Restriction: The operations authorized herein are restricted against the transportation of traffic originating at and destined to points in Alemeda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties, California. By the present petition, petitioner seeks to add the following California counties as authorized off-route service points in sub-paragraph "b": Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Shasta and Tehama. If modified as requested, petitioner's "off-route" authority would

*Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

read as follows in (b): (b) points in Alamdor, Butte, Colusa, Contra Costa, El Dorado, Glenn, Marin, Nevada, Placer, Sacramento, San Joaquin, San Mateo, Shasta, Solano, Sutter, Tehama and Yolo Counties, California;

MC 113963 (M1F), filed January 5, 1979. Petitioner: HEAVY & SPECIALIZED HAULERS, INC., 190 Polk Avenue, P.O. Box 8796, Nashville, TN 37203. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Petitioner holds motor *common carrier* certificate in MC-113963, issued February 26, 1970, which authorizes transportation, over irregular routes, of *commodities* which because of size or weight require the use of special equipment or handling, between points in TN, AL, KY, GA, NC, SC, VA, and MS, within 175 miles of Chattanooga, TN, including Chattanooga. By the instant petition, petitioner seeks to modify the authority so as to apply the 175-mile radius territorial limitation only to the State of Mississippi.

MC 124025 (Sub-5M1F), notice of filing of petition to modify permit, filed December 18, 1979. Petitioner: GLASS TRUCKING COMPANY, a corporation, 200 Chestnut St., P.O. Box 276, Newkirk, OK 74647. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma, City, OK 73106. Petitioner holds motor *contract carrier* Permit in MC-124025 Sub 5, issued October 30, 1975, MC-124025 Sub 5 authorizes transportation, over irregular routes, (as pertinent), of *flour*, in bulk, from the facilities of Ross Industries, Inc., at or near Wichita, Wellington, and Newton, KS, to Oklahoma City, and Tulsa, OK, under continuing contract(s) with Ross Industries, Inc. By the instant petition, petitioners seeks to add the following territorial description: "from the facilities of Cereal Food Processors, Inc., at or near Wichita, KS, to Oklahoma City and Tulsa, OK, under continuing contract(s) with Cereal Food Processors, Inc." (Hearing site: Wichita, KS.)

MC 124073 M1F, and MC 124073 (Sub-4M1F), (Sub-5M1F, and (Sub-7M1F), notice of filing of petition to modify permits, filed November 14, 1978. Petitioner: ROY S. SARGEANT, INC., Box 95, Vienna, NJ 07880. Representative: Edward F. Bowes, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Petitioner holds motor *contract carrier* Permits in MC-124073, issued March 1, 1973, MC-124073 Subs 4, 5, and 7, issued April 23, 1968, April 17, 1979, and June 28, 1974, respectively. MC-124073 authorizes transportation, over irregular routes, as pertinent, of (1) *frozen meats*, (a) from Moosic, PA, to Buffalo, Jamestown, Rochester, Olean, Norwich, Syracuse, Schenectady, Albany, Troy, Kingston, and Monticello, NY, Newark and Paterson, NJ, Stamford and Bridgeport, CT, Woonsocket, RI, and Pittsfield, Springfield, and Boston, MA, and (b) from New York, NY, and Newark, Jersey City and Secaucus, NJ, to Moosic, PA: (2) *fish*, breaded and unbreaded, cooked and uncooked, when transported in the same vehicle with one or more of the commodities authorized hereinabove as frozen meats and pizza pies, from Exeter, PA, to Buffalo, Fulton, Syracuse, Troy, and New York, NY, New Brunswick, Newark, Jersey City, and Paterson, NJ, Bridgeport and Hamden, CT, Woonsocket and Pawtucket, RI, and Pittsfield, Springfield, and Boston, MA; (3) *frozen fish*, when transported in the same vehicle with one or more of the commodities authorized herein as pizza pie shells, frozen meats, breading, pickled fish, french-fried potatoes, and poultry as described herein, from Gloucester and Boston, MA, Jersey City, NJ, and New York, NY, to Exeter, PA; (4) *poultry*, when transported in the same vehicle with one or more of the commodities authorized herein as pizza pie shells, frozen meats, breading, pickled fish, french-fried potatoes, and frozen fish as described herein. Restriction: Under continuing contracts with Polarized Products of Tender Brand Frozen Foods, Inc., of Moosic, PA, Phillips Seafood Kitchens, of Exeter, PA, and Profera's Pizza, Inc., of Scranton, PA.

MC-124073 (Sub-4) authorizes transportation, over irregular routes, as pertinent, of (1) *frozen meats*, from the plant site of Glidden-Durkee Division of SCM Corporation, at or near Moosic, PA, to Manchester and Nashua, NH, Burlington, VT, Milton, Ithaca, Newark, Newburgh, Rome, Utica, New York, Mineola, and Huntington, NY, Meriden, Waterbury, Hartford, Hamden, New Haven, Norwich, Wallingford, and Danbury, CT, Pawtucket and Providence, RI, and Ludlow, Fall River, Southboro, and Worcester, MA; (2) *fresh meats*, from the plant site of Glidden-Durkee Division of SCM Corporation, at or near Moosic, PA, to New York, Mineola, and Huntington, NY; (3) *fresh and frozen meats*, (a) from the plant site of Glidden-Durkee Division of SCM Corporation, at or near Moosic, PA, to New York, Mineola, and Huntington, NY, (b) from the plant site of Glidden-Durkee Division of SCM Corporation, at or near Pittston, PA, to New York and Rockville Centre, NY, and (c) from New York, NY, to the plant site of Glidden-Durkee Division of SCM Corporation, at or near Moosic, PA; (4) *frozen poultry, frozen hors d'oeuvres, frozen prepared dough, and frozen bakery products*, from the plant site of Glidden-Durkee Division of SCM Corporation, at or near Moosic, PA, to Nashua and Manchester, NH, Burlington, VT, Buffalo, Jamestown, Rochester, Newark, Newburgh, New York, Olean, Norwich, Syracuse, Schenectady, Albany, Troy, Kingston, Monticello, Utica, Milton, Ithaca, and Rome, NY, Newark and Paterson, NJ, Waterbury, Hartford, Hamden, New Haven, Stamford, and Bridgeport, Norwich, Meriden, Wallingford, and Danbury, CT, Woonsocket, Pawtucket, and Providence, RI, and Springfield, Pittsfield, Boston, Worcester, Southboro, Fall River, and Ludlow, MA; (5) *frozen prepared poultry*, from the plant site of Glidden-Durkee Division of SCM Corporation, at or near Moosic, PA, to Hoboken, NJ, New York, Farmingdale, Floral Park, and Mineola, NY; and (6) *poultry*, fresh and frozen, when transported in the same vehicle with frozen prepared poultry, frozen hors d'oeuvres, frozen prepared dough, frozen bakery products, pizza, and frozen fish (otherwise authorized), from the plant site of Glidden-Durkee Division of SCM Corporation, at Moosic, PA, to Hoboken, NJ, New York, Farmingdale, Mineola, and Floral Park, NY. Restriction: Under continuing contracts with Glidden-Durkee Division of SCM Corporation, of Cleveland, OH, and Profera's Pizza Pies, Inc., of Scranton, PA.

MC-124073 (Sub-5), authorizes the transportation, over irregular routes, as pertinent, of (1)(a) *fish*, in mixed loads with frozen or fresh meats, frozen poultry, frozen hors d'oeuvres, frozen prepared dough, frozen bakery products, or frozen whipped topping, and (b) *frozen whipped topping*, from the plant site of Polarized Products Division of Ten-Da Brand Frozen Foods, Inc., at or near Moosic, PA, to Bridgeport, Danbury, Hamden, Hartford, Meriden New Haven, Norwich, Stamford, Wallingford, Waterbury, CT, Boston, Fall River, Ludlow, Pittsfield, Southboro, Springfield, Worcester, MA, Hoboken, Newark, Paterson, NJ, Manchester, Nashua, NH, Albany, Buffalo, Farmingdale, Floral Park, Huntington, Ithaca, Jamestown, Kingston, Milton, Mineola, Monticello, Newark Newburgh, New York, Norwich, Olean, Rochester, Rome, Schenectady, Syracuse, Troy, Utica, NY, Pawtucket, Providence, Woonsocket, RI, and Burlington, VT; (2)(a) *fish*, in mixed loads with the commodities in (2)(b), and (b) *frozen or fresh meat, frozen poulty, frozen hors d'oeuvres, frozen prepared dough, frozen bakery products, and frozen* *whipped topping*, from the plant site of Polarized Products Division of Ten-Da Brand Frozen Foods, Inc., at or near Moosic, PA, to Wethersfield, CT, Brighton, Brockton, Chicopee, Everett, Medford, Norton, Raynham, Watertown, MA, Poughkeepsie, NY, and Tiverton, RI, (3) *char-broiled hamburger patties*, from Buffalo, NY, to the plant site of Polarized Products Division of Ten-Da Brand Frozen Foods, Inc., at or near Moosic, PA, and its storage facilities at Pittston, PA; and (4)(a) *frozen bread, frozen macaroni, and frozen vegetable chow mein* in mixed loads with the Commodities in (4)(a), from Boston, MA, to the plant site of Polarized Products Division of Ten-Da Brand Frozen Foods, Inc., and its warehouse at Pittston, PA. Restriction: Under continuing contracts with Polarized Products Division of Ten-Da Brand Frozen Foods, Inc., at or near Moosic, PA, and Garfield, NJ, and Glidden-Durkee Division of SCM Corporation, at Maplewood, NJ.

MC 124073 (Sub-7) authorizes transportation, over irregular routes, as pertinent, of *frozen meats, frozen meat products, frozen poultry, and frozen poultry products*, from Moosic, PA, to Manassas, Winchester, and Norfolk, VA, and Charleston and Mt. Clare, WV. Restriction: under continuing contracts with Polarized Products, Division of Ten-Da Brand Frozen Foods, Inc., of Scranton, PA. By the instant petition, petitioner seeks to modify the authority as follows: (I) In the lead docket, add in Part (1) *frozen meals*, but retain *frozen meats* as the commodity transported from New York, NY, and Newark, Jersey City, and Secaucus, NJ, to Moosic, PA. In part (2) add frozen meals to the phrase "frozen meats and pizza pies". In parts (3) and (4), add frozen meals to the phrase "pizza pie shells, frozen meats" etc. In the shipper restriction, Mass Feeding Corporation is substituted for Polarized Products of Tender Brand Frozen Foods, Inc., of Moosic, PA.

(II) in (Sub-4), the plant site name is changed from Glidden-Durkee Division of SCM Corporation to Mass Feeding Corporation. Add *frozen meals* to parts (1), (2), and (5). add *frozen meals* to part (3) except that *fresh and frozen meats* be retained in (3)(c). In part (4), *frozen meals* is added and frozen hors d'oeuvres, frozen prepared dough, and frozen bakery products is deleted. Part (6) should read *poultry*, fresh and frozen, and *frozen meals*, when transported in the same vehicle with pizza and frozen fish (otherwise authorized). And Mass Feeding Corporation, of Moosic, PA, is added to the shipper restriction.

(III) In (Sub-5), part (1) should read (a) *fish*, in mixed loads with frozen or fresh meats, frozen poultry, or frozen meals, and (b) *frozen meals*. Part (2)(b) should read *frozen or fresh meats, frozen poultry, or frozen meals*. In parts (1) through (4) all reference to the plant site of Polarized Products Division of Ten-Da Brand Frozen Foods is changed to Mass Feeding Corporation. In the shipper restriction, add Mass Feeding Corporation and delete Polarized Products division of Ten-Da Brand Frozen Foods, Inc.

(IV) In (Sub-7), *frozen meals* is added to the commodity description and in the shipper restriction Polarized Products, Division of Ten-Da Brand Frozen Foods, Inc., is changed to Mass Feeding Corporation.

Note.—By Supplemental Order in MC-124073 and MC-124073 (Sub-No. 4), served October 7, 1974, all references to Glidden Durkee Division of SCM Corporation (except those appearing under the fourth commodity description paragraph on sheet 2 and in the shippers restriction of sheet 3) in permit No. MC-124073 (Sub-No. 4) be, and they are hereby, deleted from where they appear in said permit, and substituting in lieu thereof the words "Polarized Products Division of Ten-Da Brand Frozen Foods, Inc." and that the contracting shippers restriction on sheet 3 be modified by the addition of Polarized Products Division of Ten-Da Brand Frozen Foods, Inc., of Garfield, NJ.

MC 124774 (M1F), notice of filing of petition to modify certificate, filed December 5, 1978. Petitioner: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Petitioner holds motor *common carrier* Certificate in MC-124774, issued August 9, 1971, and revised November 20, 1978. MC 124774 authorizes transportation, over irregular routes, (as pertinent), *animal, poultry, and fish feed, feed ingredients, and supplements* of each, (except in bulk, in tank vehicles), between points in IA (except Charles City), MO, and NE, on the one hand, and, on the other, points in CT, FL, MA, NV, NY, and PA. By the instant petition, petitioners seek to modify the territorial description to read as follows: "between points in IA (except Charles City), MO, NE, and those in IL in the St. Louis, MO Commercial Zone, on the one hand, and, on the other, points in CT, FL, MA, NV, NY, and PA."

MC 125985 (M1F) and MC 125985 (Sub-4) (M1F) petition to modify Sub-4 certificate and to reconcile the two commodity authorizations, filed December 22, 1978. Petitioner: AUTO DRIVEAWAY COMPANY, a Corporation, 310 S. Michigan Ave., Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. Petitioner holds motor *common carrier* certificates in MC-125985, issued October 26, 1966, and MC-125985 Sub 4, issued April 24, 1970. MC-125985 authorizes transportation over irregular routes of *passenger automobiles*, and *trucks* (¾ ton or less), with *baggage, sporting equipment, and personal effects* of the owners thereof, in secondary movements in driveaway service, between points in NH, MA, CT, NY, PA, NJ, IN, IL, MI, WI, FL, TX, CO, AZ, CA, and OR, on the one hand, and, on the other, points in the United States (including AK, but excluding HI), restricted against the following: (1) the transportation of vehicles moving on the United States Government bills of lading; (2) the transportation of vehicles by use of tow-bars; (3) the transportation of traffic having a prior or subsequent movement by rail; and (4) the transportation of motor vehicles for or on behalf of manufacturers of trucks or automobiles or from the plant site of such manufacturers. MC 125985 Sub 4 authorizes transportation, over irregular routes, of *used passenger automobiles*, and *used trucks* (three-quarter ton or less), with or without the baggage, sporting equipment, and personal effects of the owners thereof, in secondary movements, in single driveaway service between points in the United States (including AK, but excluding points in AZ, CA, CO, CT, FL, HI, IL, IN, MA, MI, NH, NJ, NY, OR, PA, TX, and WI), restricted to the following conditions: (1) said operations are restricted against the transportation of vehicles moving on United States Government bills of lading; (2) said operations are restricted against the transportation of traffic having a prior or subsequent movement by rail; (3) said operations are restricted against the transportation of vehicles for or on behalf of manufacturers of trucks or automobiles or from the plant sites of such manufacturers. Both certificates also state that the authority granted herein is subject to the right of the Commission which is hereby expressly reserved to impose thereon in the future such terms, conditions, or limitations, as it may find necessary in order to insure that the service, is performed in conformity with the provisions of the Act and the Commission's rules and regulations. Petitioner states that he now utilizes the two operating authorities to perform non-radial operations between points in the United States (including AK, but excluding HI). By the instant petition, petitioner seeks to modify the Sub 4 by deleting the word "used" from where it appears in the certificate and to reconcile the two commodity authorizations.

MC 135532 (M2F), filed December 28, 1978. Petitioner: FURNITURE WHOLESALERS, INC., 609 Davol Street, Fall River, MA 02722. Representative: Andrew Shabshelowitz, 263 Walnut Street, Fall River, MA 02722. Petitioner holds motor *common carrier* certificate in MC-135532, issued May 19, 1976, which authorizes transportation, over irregular routes, of *crated new household furniture* and *new household furnishings*, from Fall River, MA, to points in CT, RI, and Bristol County, MA; and *returned shipments* of the above-named commodities, from points in CT, RI, and Bristol County, MA, to Fall River, MA, restricted and subject to the following conditions: (1) The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Bassett Furniture Industries, of Bassett, VA, (2) Said carrier shall maintain completely separate accounting systems of its private and for-hire operations, and (3) said carrier shall not at the same time and in the same vehicle transport property both as a private carrier and as a carrier for hire. By the instant petition, petitioner seeks to modify the authortiy by deleting the condition which reads, "said carrier shall not at the same time and in the same vehicle transport property both as a private carrier and a carrier for hire.

MC 140024 (Sub-74) (M1F), notice of filing of petition to modify certificate, filed December 6, 1978. Petitioner: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: John F. DeCock (same address as petitioner). Petitioner holds motor *common carrier* Certificate in MC-140024 Sub 74, issued May 25, 1978. MC-140024 Sub 74 authorizes transportation, over irregular routes, of *baking powder* (except in bulk), from Terre Haute, IN, to Phoenix, AZ, Los Angeles, Sacramento, and San Francisco, CA, Denver, and Grand Junction, CO, Boise and Pocatello, ID, Wichita, KS, Joplin, Kansas City, and St. Louis, MO, Billings, MT, Grand Island and Omaha, NE, Albuquerque, NM, Oklahoma City, and Tulsa, OK, Portland, OR, Salt Lake City, UT, and Seattle, and Spokane, WA, restricted to the transportation of traffic originating at the facilities of Hulman & Company, at Terre Haute, IN, and destined to the named destinations. This certificate may not be joined or tacked with the carrier's other irregular route authority. By the instant petition, petitioner seeks to add Springfield, MO as a destination point.

MC 142693 (Sub-1) (M1F), filed January 16, 1979. Petitioner: CUSTOM DELIVERIES, INC., 550 Stephenson Highway, Troy, MI 48084. Representative: J. A. Kundtz, National City Bank Building, Cleveland, OH 44114. Petitioner holds motor *contract carrier* Permit in MC-142693 Sub 1, issued October 17, 1978, which authorizes transportation, over irregular routes, as pertinent, of *motor vehicle parts and accessories, and related publications, advertising material and packaging and shipping supplies*, restricted to the transportation service to be performed under a continuing contract, or contracts, with Service and Parts Division, Chrysler Corporation, and Custom Deliveries, Inc., and further restricted to shipments not to exceed 10,000 pounds. By the instant petition, petitioner seeks to modify the authority by deleting the restriction from the subject Permit which limits service to shipments not in excess of 10,000 pounds.

Republications of Grants of Operating Rights Authority Prior to Certification Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 47583 (Sub-69F) (republication), filed March 30, 1978, published in the FR issue of June 8, 1978, and republished this issue. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. A Decision of the Commission, by the *Initial Decision* of Administrative Law Judge William J. O'Brien, served January 25, 1979, becomes effective March 22, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *plastic articles and materials* (except commodities in bulk), and (2) *equipment and supplies used in the manufacture and distribution of plastic articles*, between points in the United States (except Alaska and Hawaii), restricted to the transportation of shipments originating at or destined to the facilities of Mobil Chemical Co., Plastic Division; subject to the condition that the authority herein granted to the extent it duplicates applicant's existing authority, shall be construed as conferring only a single operating right, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to delete "the facilities of Mobil Chemical Co., Plastics Division, at Jacksonville and Springfield, IL" in the territorial description.

MC 55889 (Sub-47F) (republication), filed March 31, 1978, published in the Federal Register issue of July 6, 1978, and republished this issue. Applicant: AAA COOPER TRANSPORTATION, P.O. Box 2207, Dothan, AL 36301. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. A Decision of the Commission, Review Board Number 2, decided February 6, 1979, and served March 9, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, in interstate or foreign commerce, transporting *general commodities* (except articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (A) over regular routes, (1) between Eufaula and Opelika, AL: (a) from Eufaula over U.S. Hwy 431 to Opelika, and return over the same route; and (b) from Eufaula over U.S. Hwy 431 to Junction Alabama Hwy 169, then over Alabama Hwy 169 to Opelika, and return over the same routes; (2) between Troy and Opelika, AL: from Troy over U.S. Hwy 29 to Opelika, and return over the same route; and (3) between Troy, AL, and Junction Alabama Hwy 26 and U.S. Hwy 431:

from Troy over Alabama Hwy 223 to Union Springs, AL, then over U.S. Hwy 82 to Junction Alabama Hwy 26, then over Alabama Hwy 26 to junction U.S. Hwy 431, and return over the same route; serving in connection with routes (1), (2), and (3) above, all intermediate points in Pike, Bullock, Barbour, and Russell Counties, AL, and all other points in the named Counties as off-route points; and (B) over irregular routes, between Geneva, AL, on the one hand, and, on the other, Troy and Eufaula, AL, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 109847 (Sub-29) (republication), filed February 17, 1978, published in the Federal Register issue of March 16, 1978, and republished this issue. Applicant: BOSS-LINCO LINES, INC., 3909 Genesee Street, Cheektowsga, New York 14225. Representative: Harold G. Hernly, Jr., ESQ., 110 South Columbus Street, Alexandria, Virginia 22314. A Decision of the Commission, Review Board Number 4, decided February 2, 1979, and served February 28, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): (1) between Cleveland, OH, and Westfield, NY, over Interstate Hwy 90, serving intermediate points in Pennsylvania for the purpose of delivery only, and intermediate points in Ohio; (2) between the junction of U.S. Hwy 219 and Interstate Hwy 80 (near DuBois, PA) and Carlstadt, NJ. from junction of U.S. Hwy 219 and Interstate Hwy 80 near DuBois, over Interstate Hwy 80 to Junction NY Hwy 17, then over NJ Hwy 17 to Carlstadt, and return over the same route, serving no intemediate points; (3) between Cleveland, OH, and the junction U.S. Hwy 219 and Interstate Hwy 80 near DuBois, PA, from Cleveland over Interstate Hwy 480 to junction Interstate Hwy 80 at Hudson, OH, then over Interstate Hwy 80 to junction U.S. Hwy 219 near DuBois, and return over the same route, serving intermediate points in Ohio, junction Interstate Hwy 79 and 80 for purposes of joinder only, and all other intermediate points in Pennsylvania for purposes of delivery only; (4) between Pittsburgh, PA, and the junction of Interstate Hwy 80 and U.S. Hwy 219 near DuBois, from Pittsburgh over U.S. Hwy 22 to junction of U.S. Hwy 119 near Blairsville, PA, then over U.S. Hwy 119 to junction U.S. Hwy 219 then over U.S. Hwy 219 to junction Interstate Hwy 80 near DuBois, and return over the same route, serving no intermediate points; (5) between Pittsburgh, PA and Cleveland, OH, from Pittsburgh over U.S. Hwy 22/30 to junction PA Hwy 60, then over PA Hwy 60 to junction to junction PA Hwy 51, then over PA Hwy 51 to junction OH Hwy 14, then over OH Hwy 14, to junction of Interstate Hwy 480, then over Interstate Hwy 480 to Cleveland, and return over the same route, serving all intermediate points; (6) between Pittsburgh PA, and Marietta, OH, from Pittsburgh over Interstate Hwy 79 to junction of Interstate Hwy 70, then over interstate Hwy 70 to junction of Interstate Hwy 77, then over Interstate Hwy 77 to Marietta, and return over the same route, serving all intermediate points; (7) between Cleveland, OH, and Marietta, OH, over Interstate Hwy 77, serving all intermediate points; (8) between Pittsburgh, PA, and Westfield, NY, from Pittsburgh over Interstate Hwy 79 to junction of Interstate Hwy 90 near Erie, PA, then over Interstate Hwy 90 to Westfield, and return over the same route, serving intermediate points in New York, junction of Interstate Hwys 79 and 80 for purposes of joinder only, and all other intemediate points in Pennsylvania for purposes of delivery only; (9) between Pittsburgh, PA, and Binghamton, NY, from Pittsburgh over U.S. Hwy 22 to junction U.S. Hwy 220 at Hollidaysburg, PA then over U.S. Hwy 220 to junction NY Hwy 17 near Waverly, NY, then over NY Hwy 17 to Binghamton, and return over the same route, serving all intermediate points in Pennsylvania for purposes of delivery only and points in New York, that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 111812 (Sub-535) (republication), filed September 29, 1977, published in the Federal Register issue of November 25, 1977, and republished this issue. Applicant: MIDWEST COAST TRANSPORT, INC. P.O. Box 1233 Sioux Falls, SD 57101. Representative: Ralph H. Jinks, P.O. Box 1233, Sioux Falls, SD 57101. A Decision of the Commission, *Division 1*, decided February 12, 1979, and served March 7, 1979, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *foodstuffs* (except commodities in bulk), and *beverage dispensers* moving in mixed shipments with foodstuffs, from the facilities of Food Producers International, at Minneapolis, MN, to points in California, Oregon, Washington, Idaho, Montana, Utah, Nevada, Arizona, New Mexico, Colorado, and Wyoming, restricted to the transportation of traffic originating at the named origin; that applicant is fit, willing, and able properly to perform the service authorized and to conform to the requirements to Title 49, Sub title IV, U.S. Code (formerly the Interstate Commerce Act), and the Commission's regulations. The purpose of this republication is to broaden the commodity and origin descriptions by adding "(except commodities in bulk), and *beverage dispensers* moving in mixed shipments with foodstuffs, from the facilities of Food Producers International, at Minneapolis, MN", and adding the restriction "restricted to the transportation of traffic originating at the named origin."

MC 115826 (Sub-268) (republication), filed June 15, 1977, published in the Federal Register issue August 25, 1977, and republished this issue. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore, 6015 East 58th Ave., Commerce City, CO 80022. A decision of the Commission, Review Board Number 1, decided March 8, 1979, and served March 20, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a common carrier, by motor vehicle, over irregular routes, transporting (A) (1) foodstuffs, (2) pharmaceutical materials, supplies and products, (3) chemicals, (4) alcoholic beverages (5) tobacco porducts, (6) pet foods, and (7) such commodities as are delt in by distribution or consolidation warehouses for the commodities described in (1) through (6), when moving in the same vehicle at the same time as the commodities described in (1), (2), (3), (4), (5), or (6) (except commodities in bulk in (1) through (7)), in vehicles equipped with mechinical refrigeration, (a) from Denver, CO, to points in the United States in the west of

MN, IA, MO, AR and LA (except AK and HI), restricted to traffic originating at, or moving from storage-in transit at, Denver, CO, or the facilities of Novel, Inc., located at Albuquerque, NM, and destined to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and (b) from points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), to Denver, CO, restricted to traffic originating at points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), and destined to, or moving to storage-in-transit at, Denver, CO, or the facilities of Nobel, Inc., located at Albuquerque, NM, provided that parts (a) and (b) may be tacked in connection with shipments which originate at or are destined to the facilities of Nobel, Inc. located at Albuquerque, NM; and (b) *foodstuffs* (except in bulk), between the facilities of Packers' Cold Storage, located at Laramie, WY, on the one hand, and, on the other, points in the United States in and west, of MN, IA, MO, AR, and LA (except AK and HI), restricted to traffic originating at the destined to points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), and (c) *foodstuffs and restaurant materials, equipment, and supplies* (except commodities in bulk), from points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), to the facilities or Nobel, Inc., located at (a) Denver, CO, and (b) Albuquerque, NM, restricted to the transportation of traffic originating at the named origins and destined to the named destinations, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 129387 (Sub-31) (republication), filed March 22, 1977, published in the Federal Register issue May 19, 1977, and republished this issue. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, South Dakota 57350. Representative: Doug W. Sinclair, P.O. Box 1271, Huron, South Dakota 57350. A Decision of the Commission, Review Board Number 1, decided March 5, 1979, and served March 20, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes, transporting (A) (1) *foodstuffs*, (2) *Pharmaceutical materials, supplies and products*, (3) *chemicals*, (4) *alcoholic beverages*, (5) *tobacco products*, (6) *pet foods*, and (7) for the commodities described in (1) through (6), when moving in the same vehicle at the same time as the commodities described in (1), (2), (3), (4), (5), or (6) (except commodities in bulk in (1) through (7), in vehicles equipped with mechanical refrigeration, (a) from Denver, CO, to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), restricted to traffic originating at, or moving from storage-in-transit at, Denver, CO, or the facilities of Nobel, Inc., located at Albuquerque, NM, and destined to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and (b) from points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), to Denver, CO, restricted to traffic originating at points in the United States, in and west of MN, IA, MO, AR and LA (except AK and HI), and destined to or moving to storage-in-transit at, Denver, CO, or the facilities of Nobel, Inc., Located at Albuquerque, NM, Provided that parts (a) and (b) may be tacked in connection with shipments which originate at or are destined to the facilities of Nobel, Inc., located at Albuquerque, NM; and (b) *foodstuffs* (except in bulk), between the facilities of Packers' Cold Storage, located at Laramie, WY, on the one hand, and, on the other, points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), restricted to traffic originating at and destined to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 134286 (Sub-26) (republication), filed May 31, 1966, published in the Federal Register issue of September 29, 1977, and republished this issue. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, Iowa 51102. Representative: Charles M. Williams, 1600 Sherman Street, Denver, CO 80203. A Decision of the Commission, Review Board Number 1, decided March 8, 1979, and served March 20, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes, transporting: (A) (1) *food stuffs*, (2) *pharmaceutical materials, supplies*, and *products*, (3) *chemicals*, (4) *alcoholic beverages*, (5) *tobacco products*, (6) *pet foods*, and (7) *such commodities as are delt in by distribution consolidation warehouses* for the commodities described in (1) through (6), when moving in the same vehicle at the same time as the commodities described in (1), (2), (3), (4) or (6) (except in bulk in (1) through (7)), in vehicles equipped with mechanical refrigeration, (a) from Denver, CO, to points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), restricted to traffic originating at, or moving from storage-in-transit at, Denver, CO, or the facilities of Nobel, Inc., located at Albuquerque, NM, and destined to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and (b) from points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), to Denver, CO, restricted to traffic originating at points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), and destined to, or moving to storage-in-transit at, Denver, CO, or the facilities of Nobel, Inc., located at Albuquerque, NM, provided that parts (a) and (b) may be tacked in connection with shipments which originate at or are destined to the facilities of Nobel, Inc., located at Albuquerque, NM; and (B) *foodstuffs* (except in bulk), between the facilities of Packers' Cold Storage, located at Laramie, WY, on the one hand, and, on the other, points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), restricted to traffic originating at and destined to points in the United States in and west of MN, IA, MO, AR and LA (except AK and HI), that applicant is fit, willing and able to properly perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MC 134872 (Sub-11F) (republication), filed March 7, 1978, published in the Federal Register issue of April 27, 1978, and republished this issue. Applicant: GOSSELIN EXPRESS LTD., 141 Smith Boulevard, Thetford Mines, PQ, Canada. Representative: Neil D. Beslin, 99 Washington Ave., Albany, NY 12210. A Decision of the Commission, *Review Board No. 3*, decided January 25, 1979, and served February 28, 1979, finds that the present and future public convenience and necessity require operations by applicant in foreign commerce only, as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *asbestos*, in bags, from the ports of entry on the international boundary line between the United States and Canada at Champlain, NY, and Highgate Springs and Derby Line, VT, to Meredith, NH, and Norristown, PA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the origin point by adding Highgate Springs and Derby Line, VT, in lieu of Detroit, MI.

Motor Carrier, Broker, Water Carrier and Freight Forwarder Operating Rights Applications

Notice

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the Federal Register. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally; Protests not in reasonable compliance with the requirements of the rules may be rejected.

Passenger

MC 146960, filed January 10, 1979. Applicant: VIRGINIA TOURS, INC., 2707 Williard Road, Richmond, VA 23229. Representative: Calvin F. Major, 200 West Grace St., Suite 415, Richmond, VA 23220. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at Charlottesville, Colonial Heights, Farmville, Fredericksburg, Hopewell, Petersburg, and Richmond, VA, and points in Albemarle, Amelia, Buckingham, Caroline, Charles City, Chesterfield, Cumberland, Dinwiddie, Fluvanna, Goochland, Hanover, Henrico, King William, Louisa, New Kent, Nottoway, Powhatan, Prince Edward, Prince George, Spotsylvania, and Surry Counties, VA, and extending to points in the United States, including AK, but excluding HI. (Hearing site: Richmond, VA.)

Operating Rights Application(s) Directly Related to Finance Proceedings

Notice

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formely Section 212(b)) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy

Federal Register Caption

MC 109397 (Sub-454F), filed April 27, 1979. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: Anthony N. Jacobs (same address as Applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

1. Such *contractors' equipment, machinery* and *machine parts, heavy* and *bulky articles, articles requiring special handling or rigging, self-propelled articles*, each weighing 15,000 pounds or more, and related *machinery, equipment, tools, parts*, and *supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers), incidental to and used in connection with the construction, repairing, or dismantling of pipelines, between points in AL, AR, CO, FL, GA, IA, KS, KY, LA, MN, MS, MO, NE, NM, ND, OK, OR, SD, TN, TX, WA, WI, WY, MA, RI, CT, NJ, DE, MD, NC, and DC.

2. *Commodities*, which because of size or weight require special equipment, and related *machinery parts*, and related *contractors' materials* and *supplies* when their transportation is incidental to commodities requiring special equipment, and *self-propelled articles* each weighing 15,000 pounds or more, and related *machinery, equipment, tools, parts*, and *supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers), incidental to and used in connection with the construction, repairing or dismantling of pipelines, between points in CA, on the one hand, and, on the other, points in the United States (except AK, HI, OR, VT, ME, and NH).

5. *Commodities*, which because of size or weight require special equipment, and related *machinery parts*, and related *contractors' materials* and *supplies* when their transportation is incidental to commodities requiring special equipment, and *self-propelled articles* each weighing 15,000 pounds or more, and related *machinery, equipment, tools, parts*, and *supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers), used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; (a) Between points in CA, on the one hand, and, on the other, points in AR, CO, IA, KS, KY, LA, MO, NE, NM, OK, TX, WI, ND, SD, MI, MN, IL, IN, OH, PA, NJ, DE, MD, NC, WV, VA, NY, CT, RI, MA, and DC. (b) Between NV, on the one hand, and, on the other, points in ID, WI, MN, MI, OH, NC, VA, WV, MD, DE, PA, NY, NJ, CT, MA, RI, and DC.

6. *Commodities*, the transportation of which because of size or weight requires the use of special equipment or handling, and *parts of commodities*, the transportation of which because of their size or weight requires the use of special equipment or handling, and *self-propelled articles*, each weighing 15,000 pounds or more, and related *machinery*,

equipment, tools, parts, and *supplies* moving in connection therewith (restricted to self-propelled articles which are transported on trailers); (a) Between points in AR, CO, IA, KS, LA, MO, NM, OK, TX, WY, WI, ND, SD, MN, IL, IN, OH, PA, NJ, DE, MD, NC, WV, VA, NY, CT, RI, MA, and DC.

8. *Pipe, pipe-line material, machinery* and *equipment* incidental to and used in connection with the construction, repairing, or dismantling of pipelines, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in WA, OR, WY, NM, NE, ND, MN, WI, MI, IA, MO, AR, LA, MS, IN, OH, WV, and KY, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce.

9. *Machinery, equipment, materials* and *supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in WY, NM, LA, AR, MO, NE, IA, IN, and KY, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce.

12. *Machinery, equipment, materials,* and *supplies* used in or in connection with the construction, operation, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, other than pipelines used for the transmission of water or sewerage, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in AK, on the one hand, and, on the other, points in UT, OK, TX, KS, CA, PA, GA, NY, TN, FL, VA, SD, MT, CO, AL, and IL—restricted to traffic moving to or from AK or foreign commerce.

13. *Machinery, equipment, materials* and *supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in NV, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce.

14. *Machinery, equipment, materials,* and *supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, other than pipelines used for the transmission of natural gas, petroleum, their products and by-products, water or sewerage—restricted to shipments moving to or from pipeline rights-of-way, and except commodities moving in tank vehicles, new passenger automobiles, and Classes A and B explosives, between points in AZ, CT, DE, ID, MA, MD, ME, NH, NC, NJ, NV, RI, SC, VT, and DC, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce.

17. *Steel roofing,* from Phoenix, AZ, and *reinforcing bars,* from Helena, AZ, to ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to AK or foreign commerce.

18. *Plastic pipe, conduit, couplings, fittings, vinyl siding,* and *accessories* used in the installation of those commodities, from Williamsport, MD, to ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic originating at the facilities of Certain-Teed Products Corporation in Williamsport, MD, and further restricted to traffic moving to AK or foreign commerce.

19. *Lumber, lumber products,* and *particle board,* from the facilities of Olinkraft, Inc., located at or near Winnfield and Lillie, LA, and Huttig, AR, to ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to AK or foreign commerce.

20. *Liquid* and *food processing* and *handling* and *packaging machinery* and *equipment* thereof, which because of size or weight require special handling or special equipment, between UT, WA, CA, and OR, on the one hand, and, on the other, points in the United States (except AK and HI). Restricted to traffic originating at or destined to the facilities of Crown Cork & Seal Company and its subsidiaries.

25. *Steel bar joists* and *long spans,* from Congaree, SC, to points in the United States (except AK and HI).

26. *Aircraft* and *aircraft parts* which because of size or weight require the use of special equipment, and *equipment* and *machinery* and *parts* and *materials* and *supplies* used in the maintenance, servicing, repairing, and operation of aircraft (except commodities in bulk and except automobiles, trucks, and buses as defined in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766), between points in IN, KY, NM, WY, UT, WI, OR, ND, and SD, on the one hand, and, on the other, points in the United States (except AK and HI).

27. (1) *Turbines, steam condensers, feed water heaters, weldments* and *heat exchangers,* (2) *parts* of the commodities in (1) above, and (3) *iron* and *steel castings* and *forgings,* restricted in (1) above to the transportation of commodities which because of size or weight require the use of special equipment and in (2) above to the transportation of parts which because of size or weight do not require the use of special equipment in mixed loads with commodities in (1) above, between points in TX, OK, NM, CO, KS, OH, UT, WA, OR, CA, WY, AR, LA, MO, IA, WI, IL, IN, and KY, on the one hand, and, on the other, points in the United States (except AK and HI).

28. (1) *Turbines, steam condensers, feed water heaters, weldments* and *heat exchangers,* (2) *parts* of the commodities in (1) above, and (3) *iron* and *steel castings* and *forgings,* restricted in (1) above to the transportation of commodities which because of size or weight require the use of special equipment and in (2) above to the transportation of parts which because of size or weight do not require the use of special equipment in mixed loads with commodities in (1) above, between points in ME, VT, and NH, on the one hand, and, on the other, points in the United States in and west of MN, IA, MO, AR, and LA.

34. *Electric controllers* and *instruments* requiring special equipment or special handling by reason of size or weight, incidental to and used in connection with the construction, repairing, or dismantling of pipelines, (a) From points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NM, NY, ND, OH, OK, OR, PA, SD, TN, TX, VA, WA, WV, WI, and WY, to points in ME, VT, NH, and SC. (b) From points in CT, MA, NJ, DE, and MD, to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NM, NY, ND, OH, OK, OR, PA, SD, TN, TX, VA, WA, WV, WI, and WY. (c) From points in NC, to MN, ND, SD, NE, OR, and WA.

35. *Antipollution systems* and *antipollution system parts* requiring special handling or rigging, which are fabricated metal products, from points

in NY, PA, MD, VA, and NC; to points in the United States in and west of WI, IL, MO, AR, and LA.

36. *Antipollution systems* and *antipollution system parts* requiring specialized handling or rigging, which are iron and steel articles, from points in NY, PA, MD, VA, and NC, to points in the United States in and west of WI, IL, MO, AR, and LA.

37. *Antipollution equipment* and *supplies*, from points in MD, NC, VA, NY, and PA, to points in the United States in and west of ND, SD, NE, KS, OK, and TX.

43. *Insulated wallboard* and *roof insulation*, which because of size or weight requires the use of special equipment, from points in VA, NC, CT, DE, MD, MA, NJ, NY, PA, RI, WV, and DC, to points in and west of TX, OK, KS, NE, SD, and ND.

44. *Iron* and *steel articles*, between points in CA, on the one hand, and, on the other, points in CO.

45. Such *earth drilling machinery* and *equipment*, and *machinery, equipment, materials, supplies* and *pipe* incidental to, used in or in connection with, the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment; the completion of holes or wells drilled; the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites; and the injection or removal of commodities into or from holes or wells; which because of size or weight require special equipment, and *related machinery parts* and *related contractors' materials* and *supplies* when their transportation is incidental to the transportation of commodities which because of size or weight require special equipment, or are self-propelled, weighing 15,000 pounds or more, transported on trailers; (a) Between points in CA, on the one hand, and, on the other, points in NE, ND, and SD. (b) Between points in NE, on the one hand, and, on the other, points in CT, DE, DC, IL, IN, MD, MA, MI, NJ, NY, NC, OH, PA, RI, VA, and WV. (c) Between points in NV, on the one hand, and, on the other, points in OH, PA, MI, NY, MA, RI, CT, NJ, DE, MD, WV, VA, NC, and DC.

51. *Machinery, equipment, materials* and *supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, requiring specialized handling or rigging, between points in NE, on the one hand, and, on the other, points in OH, MI, PA, WV, VA, NY, NJ, NC, MD, DE, DC, MA, RI, and CT.

52. *Aluminum*, which because of size or weight requires special equipment, between points in WA, OR, WY, UT, CO, NM, TX, OK, KS, IA, MO, AR, LA, MT, ID, KY, IL, IN, and WI, on the one hand, and, on the other, points in the United States in and east of TX, OK, KS, NE, SD, and ND.

53. (a) *Bulk conveyor systems, pressure vessel systems, heating* and *cooling systems, antipollution systems*, the transportation of which because of size or weight requires special equipment or handling, and (b) *parts* of items in (a) above, between points in UT, OR, WA, CA, CO, NM, TX, OK, KS, ND, SD, ID, MT, MN, WI, OH, IA, MO, AR, LA, KY, IL, and IN, on the one hand, and, on the other, points in the United States (except AK and HI).

54. *Transformers*, which because of size or weight require the use of special equipment, from points in CA, to points in AL, AK, FL, GA, MS, SC, and TN.

(a) Between points in MT and ID, on the one hand, and, on the other, points in MA, RI, CT, NJ, NY, PA, MD, DE, DC, VA, NC, WV, OH, MI, SD, NC, MN, and UT.

(b) Between points in ID, on the one hand, and, on the other, ports of entry on the Pacific Coast and those on the United States-Canada Boundary line—restricted to traffic moving to or from AK or foreign commerce.

60. *Liquid* and *food processing* and *handling* and *packaging machinery* and *equipment* thereof, which because of size or weight require special handling or special equipment, between points in ID and MT, on the one hand, and, on the other, points in the United States (except AK, HI, CA, UT, OR, and WA). Restricted to traffic originating at or destined to the facilities of Crown Cork & Seal Company and its subsidiaries.

61. *Aircraft* and *aircraft parts* which because of size or weight require special equipment, and *equipment* and *machinery* and *parts* and *materials* and *supplies* used in the maintenance, servicing, repairing, and operation of aircraft (except commodities in bulk and except automobiles, trucks, and busses as defined in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766), between points in ID and MT, on the one hand, and, on the other, points in the United States (except AK and HI).

67. *Source, special nuclear*, and *by-products materials, radioactive materials*, which because of size or weight require special equipment or handling, and *related reactor equipment, component parts*, and *associated materials*, between points in WV, MD, DE, DC, MI, PA, NJ, NY, CT, RI, MA, OH, WI, ND, SD, MN, ID, MT, WY, CO, NM, TX, OK, KS, IA, MO, AR, IN, CA, UT, OR, and WA, on the one hand, and, on the other, points in the United States (except AK and HI).

68. *Single* or *concentric cylinders* or *containers*, loaded or empty, which because of size, or construction require special equipment or handling, and *accessories, components* and *related parts* thereof moving in connection therewith, between the Nevada Test Site of the United States Atomoc Energy Commission located near Mercury, NV, on the one hand, and, on the other, points in AR, CO, IA, KS, KY, LA, MO, NM, OK, ID, MT, TX, WI, ND, SD, MI, MN, IL, IN, OH, PA, NJ, DE, MD, NC, WV, KY, VA, NY, CT, RI, MA, DC, WA, OR, WY, and UT.

Hearing site: At the same time and place as directly related Tri-State Motor Transit Co., Merger, Parkhill Truck Company proceeding in Docket No. MC-F-13956F.

Note

The purpose of this application is to eliminate the gateways for the above paragraphs as follows:

1. Eliminates gateways of IL, IN, VA, and WV.
2. Eliminates gateways of WY, IL, and IN.
3. Eliminates gateways of NV, ID, MT, and UT.
4. Eliminates gateways of IN, IL, and WI.
5. (a) Eliminates gateways of NV, IL, and SD. (b) Eliminates gateways of SD, IL, and WY.
6. (a) Eliminates gateways of IL, IN, OH, and WI. (b) Eliminates gateways of WY, NM, UT, WI, IN, and IL. (c) Eliminates gateways of WI, and IL. (d) Eliminates gateways of IL, OH, WI, and IN. (e) Eliminates gateways of IN and WI.
7. Eliminates gateway of KS.
8. Eliminates gateways of UT, KS, OK, and IL.
9. Eliminates gateways of CO, KS, and OK.
10. Eliminates gateways of CO, IL, KS, and OK.
11. Eliminates gateways of CO, WI, and KS.
12. Eliminates gateway of WA.
13. Eliminates gateways of MT, WY, and CO.
14. Eliminates gateway of MT.
15. Eliminates gateway of MT.
16. Eliminates gateways of IL, KS, OK, and MT.
17. Eliminates gateway of UT.
18. Eliminates gateway of PA.
19. Eliminates gateway of KS.

20. Eliminates gateways of WY, CO, and IA.
21. Eliminates gateways of WY, AR, LA, IL, and MO.
22. Eliminates gateways of OH, AR, and WY.
23. Eliminates gateways of MO and IL.
24. Eliminates gateways of WY, NM, UT, WI, and IN.
25. Eliminates gateway of Hope, AR.
26. Eliminates gateways of IL, WI, and CO.
27. Eliminates gateways of Tulsa, OK, Round Rock, TX, and UT.
28. Eliminates gateways of IL, Tulsa, OK, and Round Rock, TX.
29. Eliminates gateways of IL, Tulsa, OK, and Round Rock, TX.
30. Eliminates gateway of Pierce County, WA.
31. Eliminates gateway of WY.
32. Eliminates gateway of NV.
33. Eliminates gateway of TX.
34. (a) Eliminates gateway of VA. (b) Eliminates gateways of SC, TN, and NE. (c) Eliminates gateway of NE.
35. Eliminates gateway of Jonesburg, MO.
36. Eliminates gateway of Hope, AR.
37. Eliminates gateway of Washington County, OK.
38. Eliminates gateways of KY, LA, IL, IN, and OK.
39. Eliminates gateway of Corpus Christi, TX.
40. Eliminates gateway of Amarillo, TX.
41. Eliminates gateway of Grayston County, TX.
42. Eliminates gateway of TX.
43. Eliminates gateway of San Antonio, TX.
44. Eliminates gateway of UT.
45. (a) Eliminates gateway of NV. (b) Eliminates gateways of IL and IN. (c) Eliminates gateways of IL and IN.
46. Eliminates gateways of IL and KY.
47. Eliminates gateways of Silsbee and Bon Weir, TX.
48. Eliminates gateways of Jefferson County, KY and Washington County, OK.
49. Eliminates the gateway of Jefferson County, KY.
50. Eliminates the gateway of Charlotte, NC.
51. Eliminates the gateways of IL and IN.
52. Eliminates the gateway of Brazoria County, TX.
53. Eliminates the gateways of Houston, TX, Tulsa, OK, WI, UT, and WY.
54. Eliminates the gateways of WY and UT.
55. Eliminates the gateways of WY, IL, WI, IN, and Homer City, PA.
56. Eliminates the gateways of Polk County, AR, WI, IL, and WY.
57. Eliminates the gateway of Jewett, TX.
58. Eliminates the gateway of Corpus Christi, TX.
59. (a) Eliminates the gateways of IL, CO, KY, and WI. (b) Eliminates the gateway of CO.
60. Eliminates the gateway of WY.
61. Eliminates the gateways of CO, IL, MN, and OR.
62. Eliminates the gateways of Sunnyvale and Marlboro, CA, Round Rock, TX, and Tulsa, OK.
63. Eliminates the gateway of KY.
64. Eliminates the gateway of WY.
65. Eliminates the gateway of IL.
66. Eliminates the gateways of KY, IL, and Grundy County, IL.
67. Eliminates the gateways of IL, KY, Grundy County, IL, and NM.
68. Eliminates the gateways of Albuquerque, NM, Los Alamos, NM, IL, and OH.

This is a matter directly related to a finance proceeding in MC-F-13956F, Tri-State Motor Transit Co., Merge, Parkhill Truck Company. (Hearing site: Tulsa, OK.)

MC F-13956F, Authority sought for merger by Tri-State Motor Transit Co., P.O. Box 113 (Business Route I-44), Joplin, MO 64801, of Parkhill Truck Company, P.O. Box 912, Joplin, MO 64801. Applicant's representative: A. N. Jacobs, P.O. Box 113, Joplin, MO 64801. Operating rights sought to be merged include such commodities as *pipe, pipeline* and *oilfield machinery* and *equipment, size or weight commodities, self-propelled articles, machinery, iron and steel articles, transformers, construction equipment, metal articles, heat exchangers, building materials,* and numerous other specified commodities, as a common carrier, over irregular routes, from, to and between specified points in all the states in the United States including AK but excluding HI, with certain restrictions, as more specifically described in Docket No. MC-106497 and sub-numbers thereunder. This notice does not purport to be a complete description of all the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purpose of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirely thereof. Tri-State Motor Transit Co. is authorized to operate as a common carrier in all the states in the United States including AK but excluding HI. Applicant presently controls Parkhill Truck Company in Docket No. MC-F-10006. Application has not been filed for temporary authority under Section 210(a)(b).

Note.—No. MC-109397 (Sub-No. 454F) is a directly related matter.

Motor Carrier Alternate Route Deviations

Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this Federal Register notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carrier of Property

MC 30504 (Deviation No. 37), TUCKER FREIGHT LINES, INC., P.O. Box 3144, South Bend, IN 46619, filed March 13, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle of *general commodities,* with certain exceptions, over a deviation route as follows: From Indianapolis, IN over IN Hwy 37 to junction IN Hwy 13, then over IN Hwy 13 to junction IN Hwy 15, then over IN Hwy 15 to junction MI Hwy 103, then over MI Hwy 103 to junction US Hwy 12, then over US Hwy 12 to White Pigeon, MI, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Indianapolis, IN over US Hwy 31 to junction US Hwy 33, then over US Hwy 33 to junction IN Hwy 120, then over IN Hwy 120 to junction IN Hwy 15, then over IN Hwy 15 to junction MI Hwy 103, then over MI Hwy 103 to junction US Hwy 12, then over US Hwy 12 to White Pigeon, MI, and return over the same route.

MC 42487 (Deviation No. 122), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, P.O. Box 3062, Portland, OR 97208, filed March 13, 1979. Carrier proposes to operate as a *common carrier,* by motor vehicle of *general commodities,* with certain exceptions, over a deviation route as follows: From Atlanta, GA over US Hwy 278 to junction US Hwy 231 near Brooksville, AL, then over US Hwy 231 to junction AL Hwy 67 near Summit, AL, then over AL Hwy 67 to junction US Hwy 31 near Decatur, AL, then over US Hwy 31 to junction US Hwy 72 at Decatur, AL, then over Alt. US Hwy 72 to junction US Hwy 72 near Tuscumbia, AL, then over US Hwy 72 to junction Interstate Hwy 240 near Memphis, TN, then over Interstate Hwy 240 to junction Interstate Hwy 55 at Memphis, TN, then over Interstate Hwy 55 to junction US Hwy 63 near Gilmore, AR, then over US Hwy 63 to junction US Hwy 60 near Willow Springs, MO, then over US Hwy 60 to junction US Hwy 160 at Springfield, MO, then over US Hwy 160 to junction MO Hwy 13 at Springfield, MO, then over MO Hwy 13 to junction MO Hwy 7 near Clinton, MO, then over MO Hwy 7 to junction US Hwy 71 near Harrisonville, MO, then over US Hwy 71 to Kansas City, MO and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Atlanta, GA over US Hwy 41 to Chattanooga, TN, then over US Hwy 11 to Knoxville, TN, then over US Hwy 25W to Corbin, KY, then over US Hwy 25 to Lexington, KY, then over US Hwy 60 to Louisville, KY, then over US Hwy 150 to Shoals, IN, then over US Hwy 50 to St. Louis, MO, then over US Hwy 40 to Kansas City, MO, and return over the same route.

MC 48958 (Deviation No. 86), ILLINOIS-CALIFORNIA EXPRESS, INC., 510 E. 51st Ave., Denver, CO 80216, filed March 13, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Amarillo, TX over US Hwy 60 to Pampa, TX, then over TX Hwy 70 to junction US Hwy 83, then over US Hwy 83, to Liberal, KS, then over US Hwy 54 to Wichita, KS, then over Interstate Hwy 35 to Kansas City, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to tansport the same commodities over a pertinent service route as follows: From Amarillo, TX over US Hwy 66 to junction NM Hwy 39, then over NM Hwy 39 to junction NM Hwy 58, then over NM Hwy 58 to Springer, NM, then over US Hwy 85 to Denver, CO, then over US Hwy 6 to Sterling, CO, then over US Hwy 138 to junction US Hwy 30, then over US Hwy 30 to junction US Hwy 34, then over US Hwy 34 to junction US Hwy 73, then over US Hwy 73 to junction US Hwy 40, then over US Hwy 40 to Kansas City, MO, and return over the same route.

MC 59583 (Deviation No. 59), THE MASON AND DIXON LINES, INC., P.O. Box 969, Kingsport TN 37662, filed March 13 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From New Haven, CT over CT Hwy 34 to junction Interstate Hwy 84, then over Interstate Hwy 84 to (a) Scranton, PA, and (b) to junction NY Hwy 17, then over NY Hwy 17 to Binghamton, NY, and (2) From Syracuse, NY, over Interstate Hwy 90 to (a) Springfield, MA, and (b) junction NY Hwy 7, then over NY Hwy 7 to junction NY Hwy 2, then over NY Hwy 2 to the NY–MA State Line, then over MA Hwy 2 to Boston, MA and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From New Haven, CT over US Hwy 1 to New York, NY, then over US Hwy 9 to junction NJ Hwy 17, then over NJ Hwy 17 to junction US Hwy 46, then over US Hwy 46 to Hackettstown, NJ, then over NJ Hwy 57 to junction NJ Hwy 24, then over NJ Hwy 24 to Phillipsburg, NJ, then over US Hwy 611 to Scranton, PA, then over US Hwy 11 to Binghamton, NY, and (2) From Syracuse, NY over US Hwy 11 to Cortland, NY, then over NY Hwy 13 to Elmira, NY, then over NY Hwy 17 to Binghamton, NY, then over US Hwy 11 to Scranton, PA, then over US Hwy 611 to Phillipsburg, NJ, then over NJ Hwy 24 to junction NJ Hwy 57, then over NJ Hwy 57 to Hackettstown, NJ, then over US Hwy 46 to junction NJ Hwy 17, then over NJ Hwy 17 to junction US Hwy 9, then over US Hwy 9 to New York, NY, then over US Hwy 1 to New Haven, CT, then over US Hwy 5 to Springfield, MA, then over US Hwy 20 to junction MA Hwy 9, then over MA Hwy 9 to Boston, MA and return over the same routes.

MC 60012 (Deviation No. 6), RIO GRANDE MOTOR WAY, INC., 1400 W. 52nd Ave., Denver, CO 80221, filed March 21, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Crescent Junction, UT, over US Hwy 163 to Monticello, UT, then over US Hwy 666 to junction US Hwy 550 near Shiprock, NM, then over US Hwy 550 to Farmington, NM and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Crescent Junction, UT over US Hwy 50 to Montrose, CO, then over US Hwy 550 to Farmington, NM, and return over the same route.

MC 69833 (Deviation 31), filed March 21, 1979. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Avenue, NW, 6th Floor, Grand Rapids, MI 49503. Applicant's Representative: Mr. Harry Pohlad, Vice President-Regulation, Associated Truck Lines, Inc., 200 Monroe Avenue, NW, 6th Floor, Grand Rapids, MI 49503. Carrier proposes to operate as a *common carrier*, by motor vehicle, transporting: *General Commodities*, with usual exceptions, over a deviation route as follows: From junction Interstate Hwy, 65 and Interstate Hwy. 71 at Louisville, KY. via Interstate Hwy. 71 to Cincinnati, OH., and return over the same route for operating convenience only. Carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Louisville, KY., over U.S. Hwy. 31W to Sellersburg, IN., then over over U.S. Hwy. 31 to junction U.S. Hwy. 50, then over U.S. Hwy. 50 to Seymour, IN., then over Alternate U.S. Hwy. 31 to Columbus, IN., then over IN. Hwy. 46 to Junction IN. Hwy. 9, then over IN. Hwy. 9 to Shelbyville, IN., then over U.S. Hwy. 421 to junction IN. Hwy. 46 then over IN. Hwy. 46 to Penntown, IN., then over IN. Hwy. 101 to junction IN. Hwy. 48, then over IN. Hwy. 48 to junction U.S. Hwy. 50, and then to junction U.S. Hwy. 50 to Cincinnati, OH. and return over the same route.

MC 87909 (Deviation No. 1), (Correction)* KROBLIN TRANSPORTATION SYSTEMS, INC., P.O. Box 5000, Waterloo, IA 50704, filed March 1, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Chicago, IL over Interstate Hwy 90 to junction US Hwy 63, then over US Hwy 63 to Rochester, MN and (2) From Chicago, IL over Interstate Hwy 94 to junction Interstate Hwy 90, then over combined Interstate Hwys 90–94 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Rochester, MN and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Chicago, IL over Alternate over U.S. Hwy 30 to

*The purpose of this republication is to properly describe the proposed route in (1) above.

junction US Hwy 30, then over US Hwy 30 to Cedar Rapids, LA, then over IA Hwy 150 to Independence, IA, then over US Hwy 20 to Waterloo, IA, then over US Hwy 63 to junction IA Hwy 3, then over IA Hwy 3 to Waverly, IA, then over US Hwy 218 to Osage, IA, then over IA Hwy 9 to junction US Hwy 63, then over US Hwy 63 to Rochester, MN, and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the authority expires, this deviation, if authorized, will likewise expire.

MC 87909 (Deviation No. 3), KROBLIN TRANSPORTATION SYSTEMS, INC., P.O. Box 5000, Waterloo, IA 50704, filed March 9, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Chicago, IL Over Interstate Hwy 94 to junction Interstate Hwy 90, then over combined Interstate Hwys 90–94 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Minneapolis-St. Paul, MN and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Chicago, IL over Alt. US Hwy 30 to junction US Hwy 30, then over US Hwy 30 to Cedar Rapids, IA, then over IA Hwy 150 to junction US Hwy 20, then over US Hwy 20 to Waterloo, IA, then over US Hwy 218 to Osage, IA, then over IA Hwy 9 to junction US Hwy 63, then over US Hwy 63 to Rochester, MN, then over US Hwy 52 to junction MN Hwy 55, then over MN Hwy 55 to Minneapolis, MN and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the authority expires, this deviation, if authorized, will likewise expire.

MC 108937 (Deviation No. 17), MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Rd., P.O. Box 43640, St. Paul, MN 55164, filed March 9, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Albert Lea, MN over Interstate Hwy 35 to Kansas City, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Albert Lea, MN over US Hwy 16 to Luverne, MN, then over US Hwy 75 to Sioux City, IA, the over US Hwy 77 to Dakota City, NE, then over NE Hwy 35 to Emerson, NE, then over NE Hwy 9 to West Point, NE, then over US Hwy 275 to Waterloo, NE, then over NE Hwy 64 to Omaha, NE, then over US Hwy 6 to Lincolkn, NE, then over US Hwy 77 to Beatrice, NE, then over NE Hwy 4 to junction NE Hwy 65, then over NE Hwy 65 to junction NE Hwy 50, then over NE Hwy 50 to Nebraska-Kansas State line, then over KS Hwy 63 to junction unnumbered hwy, then over unnumbered hwy via Bern and Berwick, KS to junction US Hwy 75, then over US Hwy 75 to Sabetha, KS, then over unnumbered hwy via point two miles west of Fairview, KS to junction US Hwy 36, then over US Hwy 36 to junction unnumbered hwy, then over unnumbered hwy via Powhattan and Mercier, KS to Horton, KS, then over US Hwy 159 to junction KS Hwy 9, then over KS Hwy 9 to junction US Hwy 75, then over US Hwy 75 to Topeka, KS, then over US Hwy 24 to Kansas City, MO and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the authority expires, this deviation, if authorized, will likewise expire.

MC 11220 (Deviation No. 40), GORDONS TRANSPORTS, INC., 185 W. McLemore Ave., Memphis, TN, 38101, filed March 9, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Houston, TX over Interstate Hwy 10 to junction Interstate Hwy 12, then over Interstate Hwy 12 to junction Interstate Hwy 55, then over Interstate Hwy 55 to Jackson, MS, then over Interstate Hwy 20 to Atlanta, GA and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Houston, TX over U.S. Hwy 75 to Durant, OK, then over U.S. Hwy 70 to junction Interstate Hwy 30, west of Benton, AR, then over Interstate Hwy 30 to Little Rock, AR, then over U.S. Hwy 70 to Memphis, TN, then over U.S. Hwy 72 to junction Alt. U.S. Hwy 72, then over Alt. U.S. Hwy 72 to Decatur, AL, then over U.S. Hwy 31 to junction AL Hwy 67, then over AL Hwy 67 to junction U.S. Hwy 278, then over U.S. Hwy 278 to Atlanta, GA and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to operate all or part of the authority expires, this deviation, if authorized, will likewise expire.

Motor Carrier Alternate Route Deviations

Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this Federal Register notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 1515 (Deviation No. 740), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077, filed March 9, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage* and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Rock Hill, SC over Interstate Hwy 77 (using portions of U.S. Hwy 21 where Interstate Hwy 77 is incomplete) to junction SC Hwy 277, then over SC Hwy 277 to Columbia, SC, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Hardeeville, SC over U.S. Hwy 321 via Fairfax, SC to Columbia, SC, then over U.S. Hwy 21 to junction old U.S. Hwy 21 (redesignated SC Hwy 6) and relocated U.S. Hwy 21 near Roddey, SC, then over relocated U.S. Hwy 21 to junction old U.S. Hwy 21 near Rock Hill, SC and return over the same route.

Motor Carrier Intrastate Application(s)

Notice

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket A58811, filed April 18, 1979. Applicant: STERLING TRANSIT COMPANY, INC., 853 S. Mapel Avenue, Montebello, CA 90641. Representative: Fred H. Mackensen, c/o Murchison & Davis, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities as follows: I. Between all points and places in the following territories: 1. Sacramento and points and places within 50 miles thereof; 2. Salinas and points and places within 25 miles thereof. II. 1. Points on and within 10 miles of U.S. Highway 101 and between Los Angeles and Goleta; 2. Points on and within 10 miles of U.S. Highway 101 between Salinas and Santa Rosa; 3. Points on and within 10 miles of California Highway 17 between Santa Cruz and San Rafael; 4. Points on and within 10 miles of California Highway 1 between Santa Cruz and Carmel; 5. Points on and within 10 miles of Interstate Highway 8 between Holtville and Winterhaven; 6. Points on and within 10 miles of Interstate Highway 10 between Indio and Blythe; 7. Points on and within 10 miles of Interstate Highway 80 between Sacramento and Floriston. III. 1. Through routes and rates may be established between any and all points described above and between such points and points named in its previously certificated authority and with other certificated carriers at convenient points of interchange. 2. Transportation will be restricted against the same commodities as those contained in its present certificate. 3. In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of service both within the extended territory and between said territory and points authorized to be served in its previously certificated authority. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Bldg., Civic Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

New York Docket T-21, filed April 9, 1979. Applicant: REDDICK AUTO EXPRESS, INC., P.O. Box 47, North Syracuse, NY 13212. Representative: Herbert M. Canter, Esq., Benjamin D. Levine, Esq., 305 Montgomery Street, Syracuse, NY 13202. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities, as defined in Section 800.1 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York: Between Syracuse, NY, on the one hand, and, on the other, points in Madison and Oneida Counties, NY. N.B.: Applicant proposes to "tack" or "join" the above authority with its presently authorized operations in order to permit, in effect, an irregular route non-radial service between points in Madison, Oneida, Onondaga and Oswego Counties, NY. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Avenue, State Campus Building #4, Room G-21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

New York Docket T-9650, filed April 5, 1979. Applicant: JUAN I. ORTIZ, d.b.a. ORTIZ ENTERPRISE, 40-09 82nd Street, Jackson Heights, NY 11432. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities, between New York City and all points in the State. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Avenue, State Campus Building #4, Room G-21, Albany, NY 12232, and should not be direct to the Interstate Commerce Commission.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15432 Filed 5-16-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-26 (Sub-No. 16F]

Southern Railway Co.; Abandonment Near Belton and Piedmont in Greenwood, Abbeville, Anderson, and Greenville Counties, SC; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided April 23, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen —— I.C.C. ——* decided February 9, 1979, and further, that Southern may not exercise the authority granted herein until approval of the pending directly related application in Finance Docket No. 28970F and institution of operation thereunder, the present and future public convenience and necessity permit the abandonment by the Southern Railway Company of its line of railroad extending from railroad milepost V-89.1 near Greenwood, SC, to railroad milepost V-115.15 near Belton, SC, and from railroad milepost V-116.85 near Belton, SC, to railroad milepost V-131.85 near Piedmont, SC, a total distance of 42.774 miles, in Greenwood, Abbeville, Anderson, and Greenville Counties, SC. A certificate of public convenience and necessity permitting abandonment was issued to the Southern Railway Company. Since no investigation was instituted, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than June 1, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective July 2, 1979.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-15430 Filed 5-16-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 97
Thursday, May 17, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

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[M-218, Amdt. 2; May 14, 1979

CIVIL AERONAUTICS BOARD.

Notice of change of time for the May 17, 1979, meeting.

TIME AND DATE: 1:30 p.m., May 17, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Board Meeting will be at 1:30 p.m. instead of 10 a.m. on May 17, 1979.

[S-992-79 Filed 5-15-79; 3:46 pm]
BILLING CODE 6320-01-M

2

[M-220, May 15, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., May 23, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, Washington, D.C. 20428.

SUBJECT: ORAL ARGUMENT—Docket 31571–*Northwest Alaska Service Investigation.*

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-993-79 Filed 5-15-79; 3:46 pm]
BILLING CODE 6320-01-M

3

[M-219, May 11, 1979]

CIVIL AERONAUTICS BOARD.

Short notice of Board meeting and short notice of item to be closed.

TIME AND DATE: 10 a.m., May 14, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Docket 32851, Agreement CAB 1175, as amended: on November 2, 1978, IATA filed for Board approval amendments to its *Provisions for the Regulation and Conduct of the IATA Traffic Conferences.* (Memo No. 7959-B, BPDA, OGC, BLJ, BIA, BCP)
2. Japan Off-Route Charters. (BIA)

STATUS: Open (Item No. 1); Closed (Item No. 2)

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The Board has been carefully considering comments from various airlines, organizations, government agencies and sovereign foreign nations concerning its Order to Show Cause with respect to various agreements adopted by the International Air Transport Association. (Order 78-6-78) IATA, supported by a number of other parties, has asked that the Board's consideration of these issues be expedited. At this meeting further action in this docket will be considered which may involve expedited filing dates. So that the public and parties will have as much time as possible, the following Members voted that agency business requires that a Board Meeting be held on May 14, 1979 at 10 a.m. and that no earlier announcement of this meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Japan Air Lines Company, Ltd. applied on May 7, 1979, to perform an off-route charter flight on May 16. Trans International Airlines filed an objection on May 8. The staff could not prepare an order for Board action in time for the May 10 meeting and the flight is scheduled to depart the day before the next meeting scheduled for May 17. Accordingly, the following Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Gloria Schaffer

Public disclosures, particularly to foreign governments, of opinion, evaluations, and strategies in the discussions could seriously compromise our ability to achieve aviation objectives that would be in the best interests of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that any such meeting should therefore be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Gloria Schaffer

Persons Expected To Attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. Sanford Rederer, Mr. David M. Kirstein, Mr. Richard Klem, Mrs. Stephen H. Lachter, and Mr. James L. Deegan.
Managing Director.—Mr. Cressworth Lander.
Executive Assistant to the Managing Director.—Mr. John R. Hancock.
Bureau of International Affairs.—Mr. Rosario J. Scibilia, Mr. Richard M. Loughlin, Mr. David A. Levitt, Mr. James Horneman, Mr. Regis Milan, Mr. Dean Johnson, Mr. Ivars V. Mellups, and Mr. Williard L. Demory.
Office of the General Counsel.—Philip J. Bakes, Jr., Mr. Gary J. Edles, and Mr. Michael Schopf.
Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. Herbert P. Aswall, Mr. Douglas Leister, and Mr. John Kiser.
Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Larry Manheim.
Bureau of Consumer Protection.—Mr. Reuben Robertson.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section

310b.5(9)(B) and that the meeting may be closed to public observation.

Gary J. Edles,

Acting General Counsel.

[S-994-79 Filed 5-15-79; 3:46 pm]

BILLING CODE 6320-01-M

4

[M-218, Amdt. 1; May 14, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of item to the May 17, 1979, agenda.

TIME AND DATE: 10 a.m., May 17, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 28. Peru Negotiations (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The Board will meet on May 17 after the Open Board Meeting to discuss the results of negotiations conducted on May 10, 1979 on Item 28. Accordingly, the following Members have voted that agency business requires that Item 28 be added to the May 17 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies in the discussions could seriously compromise the ability of the United States Delegation to achieve an agreement which would be in the best interests of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that any such meeting should therefore be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

Persons Expected To Attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.

Assistant to Board Members.—Mr. Sanford Rederer, Mr. David M. Kirstein, Mr. Richard Klem, Mr. Stephen H. Lachter, and Mr. James L. Deegan.

Managing Director.—Mr. Cressworth Lander.

Executive Assistant to the Managing Director.—Mr. John R. Hancock.

Bureau of International Affairs.—Mr. Frank Murphy, Mr. David A. Levitt, Mr. Rosario J. Scibilia, Mr. Richard M. Loughlin, and Ms. Caroline Coldren.

Office of the General Counsel.—Mr. Gary J. Edles, Mr. Michael Schopf, and Mr. Peter B. Schwarzkopf.

Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Mr. John Kiser, Mr. Douglas Leister, Ms. Barbara A. Clark, and Mr. Herbert P. Aswall.

Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Larry Manheim.

Bureau of Consumer Protection.—Mr. Reuben Robertson and Ms. Patricia Kennedy.

Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 310b.5(9)(B) and that the meeting may be closed to public observation.

Gary J. Edles,

Acting General Counsel.

[S-995-79 Filed 5-15-79; 3:46 pm]

BILLING CODE 6320-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, May 14, 1979, the Corporation's Board of Directors determined, on motion of Acting Chairman John G. Heimann (Comptroller of the Currency), seconded by Director William M. Isaac (Appointive), that Corporation business required its addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request by Societe Generale for relief from the mandatory insurance required under section 6(b) of the International Banking Act.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: May 14, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-991-79 Filed 5-15-79; 3:28 pm]

BILLING CODE 6714-01-M

6

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO. FR-S-79-953.

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, May 16, 1979 at 10 a.m.

CHANGE IN MEETING: The following matter has been added to the Agenda:

"Release of transcripts of portions of Commission meetings relevant to the matter of *Roeder v. FEC.*"

* * *

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 17, 1979 at 10 a.m.

CHANGE IN MEETING: The following matters have been added to the portions of the meeting open to the public:

1. Policy on Release of Presidential Audits.
2. Status of 1976 Presidential Audits: (a) Shriver; (b) Harris (in part).
3. Response to Senate Appropriations Committee.

The following matters have been added to the portion of the meeting closed to the public:

1. Carter Presidential Audit (General Election).
2. Udall Presidential Primary Audit.
3. Harris Presidential Primary Audit (in part).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone, 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-983-79 Filed 5-15-79; 9:51 am]

BILLING CODE 6715-01-M

7

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 28147, May 14, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., May 16, 1979.

CHANGE IN MEETING: The following item has been added:

Item No., Docket No., and Company

CAG-27. RP76-90 (Phase II), Kansas-Nebraska Natural Gas Company, Inc.

ER-4. ER79-150, Southern California Edison Company.

M-8(B). CP79-228, Transcontinental Gas Pipe Line Corporation.

CP-2. CP74-192, Florida Gas Transmission Company.

Kenneth F. Plumb,

Secretary.

[S-990-79 Filed 5-15-79; 3:28 pm]

BILLING CODE 6740-02-M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on May 23, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634-4015.

Dated: May 15, 1979.

[S-984-79 Filed 5-15-79; 11:09 am]

BILLING CODE 7600-01-M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on May 31, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634-4015.

Dated: May 15, 1979.

[S-985-79 Filed 5-15-11:09 am]

BILLING CODE 7600-01-M

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on June 7, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634-4015.

Dated: May 15, 1979.

[S-986-79 Filed 5-15-79; 11:09 am]

BILLING CODE 7600-01-M

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on June 14, 1979.

PLACE: Room 1101, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634-4015.

Dated: May 15, 1979.

[S-987-79 Filed 5-15-79; 11:09 am]

BILLING CODE 7600-01-M

12

POSTAL RATE COMMISSION.

TIME AND DATE: 8:15 a.m., Wednesday, May 16, 1979.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Visit of Canadian postal officials on May 17;
2. House hearings scheduled for May 24.

CONTACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone, (202) 254-5614.

[S-988-79 Filed 5-15-79; 12:59 pm]

BILLING CODE 7715-01-M

13

POSTAL RATE COMMISSION.

TIME AND DATE: 8:30 a.m., Thursday, May 17, 1979.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Status of Docket No. MC78-1. Closed pursuant to 5 U.S.C. § 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone, (202) 254-5614.

[S-989-79 Filed 5-15-79; 2:02 pm]

BILLING CODE 7715-01-M

federal register

Thursday
May 17, 1979

Part II

Department of Transportation

Office of the Secretary

Minority Business Enterprise;
Participation in Contracts and Programs
Funded by DOT

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Part 23]

[OST Docket No. 64; Notice No. 79-8]

Participation by Minority Business Enterprises in Contracts and Programs Funded by the Department of Transportation

AGENCY: Department of Transportation.

ACTION: Notice of proposed rulemaking

SUMMARY: The proposed regulations would establish a uniform Departmental program for participation by firms owned and controlled by socially and economically disadvantaged individuals, particularly minorities and women, (MBEs) in contracts and progams funded by the Department.

These regulations would implement section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95-599); section 8(d) of the Small Business Act of 1953, as amended (Pub. L. 95-507); and would carry out the Department's responsibilities under Executive Order 11625 and the President's directive to increase Federal contracting to MBEs. The regulations would cancel all existing DOT MBE regulations, orders, circulars, and administrative requirements except DOT Order 4000.7A.

DATES: Interested parties may submit written comments, suggestions, or views. Written comments must be received on or before July 16, 1979, and should reference the specific sections of the rule on which the comments are made.

ADDRESS: Send comments on the proposed rule to: Docket Clerk, OST Docket No. 64, Office of the General Counsel, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Gary D. Gayton, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 426-4040, principal policy person; or Pamela Michell Hollar, Urban Mass Transportation Administration, Department of Transportation, 2100 Second Street, SW, Washington, D.C. 20590, (202) 426-4038, principal author.

Background

It is the policy of the Department of Transportation to encourage and increase the participation of minority business enterprises (MBEs) in contracts and programs funded by the Department. Economically and socially disadvantaged individuals, including minorities and women, have been traditionally underrepresented as owners and managers of businesses in this country and as DOT and DOT-assisted contractors. To overcome this underrepresentation, on March 6, 1978, the Secretary of Transportation issued DOT Order 4000. 7A, Minority Business Enterprise Program, which sets forth the administrative framework for the Department's MBE program and requires the Departmental elements to issue implementing plans. This regulation is the implementation plan for the Order applicable to the public for programs and contracts of all Departmental elements.

The legal authority for the Order and this regulation includes Executive Order 11625, dated October 13, 1971, which requires that Federal executive agencies develop comprehensive plans and programs to encourage minority business enterprise. More recently, President Carter, in his Urban Policy Statement of March 27, 1978, directed all Federal agencies to triple Federal contracting to MBEs by the end of fiscal year (FY) 1979 and to include MBE goals in Federal assistance programs.

Section 8(d) of the recently amended Small Business Act (Pub. L. 85-507) requires the development of subcontracting programs to utilize firms owned and controlled by socially and economically disadvantaged individuals prior to the award of major government contracts. The statute also requires programs for nondisadvantaged small businesses. That provision is not implemented in this regulation; it will be addressed by the Department in a separate future action.

The Department of Transportation for some time prior to the issuance of DOT Order 4000. 7A has been concerned with increasing opportunities for minority business enterprises. The numerous statutes and regulations which create and define the programs of the operating elements of DOT include provisions for nondiscrimination, racially-based affirmative action, and in some instances, specific MBE requirements.

Secton 905 of the Railroad Revitalization anf Regulatory Reform Act of 1976 (4R Act), and the regulations implementing it (49 CFR, Part 265), prohibits discrimination on the basis of race, color, national origin or sex in the participation in, or benefits of, any program funded by the 4R Act, and explicitly requires the Federal Railroad Administration and its recipients to take affirmative action, including the development and implementation of affirmative action programs, to assist minority-owned businesses in the programs set up by that Act. Section 906 of the Act creates a Minority Business Resource Center to, among other things:

> Design and conduct programs to encourage, promote and assist minority entrepreneurs and businesses to secure contracts, subcontracts, and projects related to the maintenance, rehabilitation, restructuring, and improvement, and revitalization of the Nation's railroads (49 U.S.C. sec. 11(c)(4)).

Section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. sec. 1730), requires the Federal Aviation Administration to take affirmative action to assure that no person is discriminated against on the grounds of race, creed, color, national origin or sex in any program or activity funded by the Act. The legislative history of the provision reveals a particular concern for increasing MBE participation. A recent amendment to the Urban Mass Transportation Act of 1964, section 19 (Pub. L. 95-599), requires the Urban Mass Transportation Administration (UMTA) to take affirmative action to assure that no person is discriminated against on the grounds of race, color, national origin, age, or sex in any program or activity funded by the Act. Prior to the passage of this amendment, UMTA had issued an interim circular (UMTA C 1165.1) which contains requirements for affirmative action for MBEs by grant applicants which are similar to those contained in this regulation.

The Federal Highway Administration has regulations creating specific affirmative action requirements for its aid recipients to encourage MBEs to bid on Federally-assisted highway projects (23 CFR Subpart B).

Congress has recently shown its support for the concept of using Federal financial assistance programs to promote minority business enterprises through is enactment of the ten percent MBE participation provision in section 106(f)(2) of the local Public Works Capital Development and Investment Act of 1976, as amended (42 U.S.C. sec. 6705(f)(2)). In addition, the 8(a) program of the Small Business Administration (15 U.S.C. sec. 637(a)) is a program specifically designed to assist businesses owned by economically and socially disadvantaged individuals to obtain Federal contracts through the use of competitive and negotiated set-asides. OMB circular A-102 requires Federal financial assistance recipients to carry out affirmative action to ensure MBE utilization.

There is significant authority for the use of Federal contracts and grants to promote national goals. There are at least 39 programs which use Federal contracts and grants to futher goals not related to the object of the procurement, including provisions to promote the hiring of veterans, the purchase of American products, and the requirement of affirmative action by its contractors and grantees.

In an area analogous to that covered by Executive Order 11625, for instance, the Federal Government has required its contractors to take affirmative steps to promote the hiring of minority employees in Federally-funded projects under Executive Order 11246, as amended. Under Executive Order 11246, courts have approved a variety of affirmative actions including the imposition of specific numerical minority hiring goals. The same principles which courts have held to sanction affirmative action requirements for contractors and grantees under Executive Order 11246 support the affirmative action requirements which this regulation imposes on contractors and grantees in the area of minority business enterprise.

Current MBE Utilization

The President, in his Urban Policy Statement, and the Secretary, in DOT Order 4000.7A, have both emphasized the vital role that MBEs are to play in direct Federal and Federally-assisted contracting. Heretofore, MBEs have not participated meaningfully in this contracting while members of minority groups represent approximately 15.7% of the United States population according to the 1970 census, they own only 3% of the businesses in the United States. Statistics for women are even more disparate; while they comprise 51% of the population, they own only 4.6% of the businesses.

The statistics in terms of gross receipts also show disparity. For example, women-owned business receipts totalled only 0.3% of all United States business receipts in 1972, the most recent available figures. In spite of Federal programs of the Small Business Administration, the Department of Commerce, and others to assist MBEs (these programs place little emphasis on women-owned firms), participation by MBEs in Federal contracting is negligible. The Office of Minority Business Enterprise reported in January 1978 that minority-owned firms received only $1 billion, or slightly more than 1%, of the approximately $80 billion in total Federal procurements in FY 1977.

There are a number of reasons for this lack of MBE participation, according to the Civil Rights Commission Report, "Minorities and Women as Government Contractors". Some of these reasons are that:

1. Federal contracting procedures and practices tend to place an added burden on minority and female-owned firms seeking government contracts.

2. Insufficient working capital and lack of knowledge of bidding opportunities limit the competitiveness of MBEs for government contracts.

In DOT's experience, past failure by bonding companies to bond MBEs, by banks to finance their development, and by construction unions to give minorities and women the experience in construction necessary to allow them to form their own companies are also important factors in the low level of MBE participation.

The record of the Department of Transportation in MBE utilization over the past few years shows the need for more affirmative efforts if we are to increase participation by this underutilized segment of the economy.

The Department's direct contracting with MBEs has been increasing since FY 1976. MBEs received approximately 6.8% of the dollar value of the total direct contracts by the Department in FY 1976. This figure increased to 7.3% in FY 1977. In FY 1978 the percentage increased to 10.3 percent.

Much of this increase is directly related to the informal implementation of DOT Order 4000.7A.

Because there was never before a program for women-owned businesses, statistics on their participation in DOT contracts are not available. It is clear, however, that their degree of involvement is minimal. Women have not traditionally participated in either the construction or transportation fields in which the bulk of DOT contracts are let. As the Civil Rights Commission Report concludes, in all direct Federal contracts, participation by firms owned by women is probably considerably less than by traditional minority-owned firms.

There is evidence that awards to MBEs are concentrated in certain areas, such as computer services, social science research, and other support type contracts awarded by the Department. Many fewer MBEs participate in the technical transportation related contracting carried out by the Department.

The major portion of MBE participation in the direct contracting program is directly attributable to the 8(a) program of the Small Business Administration. Thus, if the Department were to rely solely on competitive awards and subcontracts, the extent of MBE participation would greatly decrease. This supports th Department's conclusion that there is a need for special programs such as the 8(a) program to ensure MBE participation and that affirmative action in addition to the 8(a) program is necessary if the President's mandate to increase contracting to MBEs is to be achieved.

The other existing program to support MBE participation is the MBE subcontracting program required by the Federal Procurement Regulations (41 CFR 1-1.13) for contracts in excess of $500,000. According to the Civil Rights Commission Report, the implementation of this program "has been uncoordinated, unstructured, and understaffed." The report goes on to state that:

"The minority subcontracting program does not encourage the participation of nonminority, female-owned firms and, with respect to firms owned by minorities, it is more a pormise that a program."

In terms of dollar levels, the DOT financial assistance program is far more significant that direct DOT contracting. Unfortunately, MBE participation is at a low level in this program. Over the past three fiscal years, MBE participation has only increased from approximately 1% to 2% of all DOT financial assistance, which totals nearly $10 billion.

The Civil Rights Commission Report found that little had been done to implement the requirements of OMB Circular A-102 that grantees undertake affirmative action to ensure MBE utilization. Implementation has generally been limited to the inclusion of the circular language in grant agreements without monitoring and enforcement. The report recommends that Federal agencies "enforce Federal policies and procedures designed to stimulate the development of special contracting programs by State and local Governments, including affirmative action programs". The report also recommends the development of a data collection and reporting system to assist in monitoring activities.

The experience of the Department to date, as well as the experience of the Economic Development Administration (EDA) of the Department of Commerce, indicates that affirmative efforts and specific MBE requirements do result in significant MBE utilization. The 15% MBE goal on the Northeast Corridor Improvement Program of the Federal Railroad Administration is currently being exceeded by more than 3%. Nearly each time a goal has been placed in a contract let by a DOT recipient, the goal has been met or exceeded. The 10% goal on the Local Public Works Act administered by EDA is also being exceeded.

SUPPLEMENTARY INFORMATION: This regulation has been developed with the explicit aim of implementing not only the policies and statutes requiring affirmative action for MBE participation, but also the policies calling for understandable regulations which do not impose administrative burdens on the public. The necessity for monitoring the performance of contractors and recipients and for ensuring that only eligible MBEs benefit from the program means that some recordkeeping and reporting requirements will be created. In the Department's view, the requirements contained in this proposed rule are the least burdensome ones consistent with the goal of the regulations, increased MBE participation. Nevertheless, we welcome the comments of the public regarding alternative approaches which will result in significantly increased MBE involvement in DOT activities while creating lesser administrative requirements.

This regulation will be implemented by the Department in accordance with the procedures and responsibilities set forth in DOT Order 4000.7A. The development of this regulation has been based primarily on the Department's experience in working to increase MBE participation. Information gathered in informal contacts by DOT employees with contractors' organizations and individual contractors, both minority and non-minority, has also been considered in drafting this proposal.

A regulatory evaluation of the impact of this regulation has been prepared and is available in the public docket.

Overview of the Proposed Regulation

Subpart A—General

This subpart provides the general framework for the regulation.

Section 23.1 Purpose. This section states the general purpose of and the policy behind the regulation and specifies those statutes which it implements in part.

Section 23.3 Applicability. This section indicates that the regulation applies to all contracts and financial assistance agreements of the Department which are not carried out entirely outside the United States, its possessions, Puerto Rico, and the North Mariana Islands.

Section 23.5 Definitions. This section defines the terms used in the regulation. Of particular importance are the definitions of "minority business enterprise" and "socially and economically disadvantaged individuals". The Department has attempted to make these definitions compatible with the definitions in section 8(d) of the recently amended Small Business Act as well as section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; section 30 of the Airport and Airway Development Act of 1970, as amended; and section 19 of the Urban Mass Transportation Act of 1964, as amended. It is the Department's desire to have a uniform definition throughout the Department and thus minimize the confusion and burden on the public. The Department's definition considers all racial and ethnic minorities to be socially and economically disadvantaged under the Department's program, because members of these groups have been disadvantaged and discriminated against. Because there is a prohibition against sex discrimination and a mandate to undertake affirmative action to this end in the three DOT statutes cited above, and because statistics indicate that women have been disadvantaged as business owners and DOT contractors, women are to be considered economically and socially disadvantaged persons. Creed and age have not been included in these definitions because the Department has no evidence that creed or age has been a basis for lack of participation in its direct and assisted contracts. The term "lawfully residing" includes persons who are not yet U.S. citizens but are on their way to becoming so.

"Owned and controlled" as used in the MBE definition means at least 51%, because in the Department's view and in the Small Business Act, 51%, rather than 50%, is needed for control. This term has also been defined to include control of daily operations to ensure more than paper ownership.

"Dot-assisted contractor" has been defined to include lessees on DOT-assisted facilities because the Department recognizes that the existence and success of these businesses is directly related to DOT financial assistance provided at the facility.

Section 23.7 Certification of the Eligibility of Minority Business Enterprises. Past experience within the Department, among its recipients, by EDA, and within the Small Business Administration indicates that unless great care is taken, firms which are not truly owned and controlled by economically and socially disadvantaged individuals benefit from MBE programs. The Department has developed criteria for evaluating if firms are in fact eligible for participation as MBEs. Based on information submitted on a form created for this purpose, DOT or its recipients of financial assistance will certify as eligible for MBE participation firms proposed for contract or subcontract award which meet these criteria. The Department recognizes the administrative burden of this requirement and requests specific comment on the benefits of this process as opposed to self-certification combined with investigation of questionable firms.

Section 23.9 Counting MBE Participation Toward Meeting MBE Goals. This section sets forth a uniform system through which the Department can assess the success of its own and its recipients' efforts to contract with minority business enterprises. The total value of the contract to an MBE is counted toward MBE goals regardless of the amount of the contract subcontracted to non-MBEs. However, DOT is concerned that MBEs not be used as mere conduits for contracts in order to meet goals and this section has a provision to prohibit this.

Subpart B—Direct Department of Transportation Contracts

This subpart sets forth the MBE requirements to be included in direct Department of Transportation solicitations and contracts. The Department is issuing a deviation from Subpart 1-1.13 of the Federal Procurement Regulations (FPR), concerning the definition of MBE, to carry out this subpart. In the Department's view, deviations are not necessary from other provisions of the FPR, including FPR Subparts 1-1.7 and 1-1.8, to carry out competitive MBE set-asides or other requirements on this subpart.

Section 23.21 MBE Goals for Direct DOT Contracting. This section explains how the Department establishes its annual minority and female business utilization goals. The goals are an estimate of the potential utilization of known MBEs in light of the upcoming procurement activity for a given Federal fiscal year.

The Department has determined that separate goals for minority businesses and female businesses are necessary to insure that both disadvantaged groups benefit fairly from the program without negatively impacting on each other.

Firms owned and controlled by minority women are counted toward only one goal. The Department specifically solicits public comment on whether these firms sould be counted toward the minority goal, toward the female goal, or toward either one at the discretion of the firm, the Department, the prime contractor, or the recipient.

Section 23.23 Utilization of Minority Business Enterprise Clause. This section sets forth the MBE clause which will be included in all DOT solicitations and contracts in excess of $10,000. It states the policy of the Federal Government established by the Small Business Act.

Section 23.25 Minority Business Enterprise Subcontracting Program. This section sets forth the MBE subcontracting program requirements which are included in all solicitations and contracts in excess of $1,000,000 for contracts for construction of any public facility or $500,000 for other contracts with subcontracting opportunities. These thresholds are established by the Small Business Act. DOT requests specific public comment on lowering the dollar thresholds to cover MBE subcontracting opportunities in contracts below the Small Business Act thresholds.

The apparent low bidder or apparent successful offeror must submit an acceptable MBE subcontracting program prior to the award of a DOT contract. Compliance with previously approved subcontracting programs is a factor in the determination of responsibility of the bidder or offeror. Programs are made as part of the contract and failure to carry them out in a material breach of contract.

The provisions of this section are the same as those of section 8(d) of the Small Business Act, as amended, with the following exceptions. The Department has not exempted small business concerns as defined in the Small Business Act, from these requirements and requests public comment on this proposed action. If DOT exempts these firms, as does the Small Business Act, the major portion of our contractors will be exempted and thus the success of our MBE efforts will be greatly limited. We believe such an exemption is contrary to the purposes of DOT's program and is not required by the general authorities for the program.

The Small Business Act requires the contractor to set MBE utilization goals in its subcontracting program. The Department, as explained in § 23.27, will set the goals that must be met in most instances. Under this program, only in those contracts where a subcontracting program is required but no MBE goals have been set by DOT will the contractor's subcontracting program be required to include goals established by the contractor.

Section 23.27 MBE Goals. This section states that requests for proposal and invitations for bid for which there are known capable MBEs include specific MBE goal requirements which must be compiled with in the bid or proposal in order to be eligible for contract award. There will be separate minority and female goals in those contracts where there is sufficient subcontracting and known minority and female MBEs to jusitfy two goals. In selected contracts goals may be established that include firms which are not small as defined by the Small Business Act but when are owned and controlled by socially and economically disadvantaged persons, as long as a specified portion of the goal is reserved for MBEs. The Department requests specific public comment on this proposal. The requirements specify that the bidder or offeror must identify in its bid or proposal the names of the firms and the dollar value of the contracts to be awarded to MBEs in order to meet the goals. If the bidder or offeror is unable to meet the goals, it must submit a report of its best efforts to this end in its bid/proposal.

A bidder who rejects an MBE subbid which is not the lowest subbid received, but is reasonable, may not meet the reasonable efforts test. Because MBE participation is a condition of responsiveness, the bidder must determine if rejection of a nonlow but reasonable subbid from an MBE and thus failure to achieve MBE goals is likely to cause its bid to be rejected as nonresponsive. DOT is proposing to use a rebuttable presumption in internal guidance to its contracting officers that a MBE subbid which exceeds 5 percent is not reasonable. Specific public comment is requested on the appropriateness of this 5 percent figure.

The MBE utilization commitments become part of the contract and are subject to compliance and enforcement action. The Department has determined that only if MBE participation is a clear cut factor in the evaluation of the bid or proposal, as well as a condition of contract award, can MBE participation be assured.

Section 23.29 MBE Set-Asides. This section provides the solicitation language for contracts which are to be set-aside for competition solely among minority business enterprises.

MBE set-asides are seen by the Department as only one way to meet MBE goals and increase MBE participation. They will be used by the Department when it becomes apparent that the goals established by the Department will not be achieved without their use. The use of set-asides must be justified in accordance with the following criteria:

(1) Previous MBE participation in this type of contract work has been minimal; and

(2) At least three MBEs with capabilities consitent with the contract requirements exist within the relevant geographical area.

The Department's set-aside program is consistent with the Federal Procurement Regulations and are a permissible tool of affirmative action to increase involvement by MBEs in Federal contracting. This view is consistent with the case law developed under Executive Order 11246, the Local Public Works Act, as well as the decision by the Supreme Court in *Regents of the University of California* vs. *Bakke*, — U.S. — (1978), U.S. Law Week, Vol. 46, No. 50, June 28, 1978. These authorities support the Department's decision to consider race, ethnicity, and sex in fashioning remedies for the effects of past discrimination, as well as its ability to structure its own affirmative action program to achieve the remedial action it perceives necessary.

DOT's MBE set-asides have been made strictly competitive to ensure a reasonable price and to give MBEs experience in a competitive environment. The program permits a full degree of competition while ensuring an award to an MBE.

Section 23.31 MBE Certification. This section requires MBEs who are the apparent low bidder/successful offeror or who are listed as subcontractors in the bid/proposal of the apparent awardee to be certified by the appropriate office of civil rights pursuant to the standards of § 23.7. The contract is awarded only after the certification is made.

Section 23.33 Maintenance of Records and Reports by Direct DOT Contractors. This section requires contractors who are awarded contracts incorporating MBE requirements to submit quarterly "Optional Form 61's" which summarizes their MBE activity. Contractors are also required to maintain records on procedures which have been adopted to comply with the requirements of the contract and documentation supporting their reports. This material must be available for inspection by Federal compliance officers.

Subpart C—Department of Transportation Financial Assistance Programs

This section sets forth the MBE requirements for applicants and recipients of DOT financial assistance.

Section 23.41 General. This section requires certain applicants for DOT financial assistance to submit an acceptable four component MBE program with their financial assistance application if they let contracts with DOT funds. Major applicants for specified types of financial assistance meeting certain dollar thresholds who submit applications under which DOT-assisted contracts will be let must submit an acceptable ten component MBE program with their application. Applications shall not be approved unless they contain an approved MBE program. Once an MBE program is approved by one Departmental element, it need not be resubmitted for future applications, as long as all requirements for approval continue to be met and the implementation of the program is achieving compliance. The Department is considering the designation of a lead Departmental element for approval of MBE programs of applicants to more than one Departmental element. This program becomes a part of the financial assistance agreement and is binding on the applicant for all future financial assistance agreements, as well as for those contracts let by the applicant after the approval date of the program, even if the approval date of the grant or project under which the contract is let is earlier than the approval date of the program. This pre-award requirement necessitates that recipients plan early for desired MBE results and integrte MBE participation planning into their contract planning process. It also enables the Department to judge before awarding financial assistance if its funds are likely to be used to achieve the Government objective of increasing MBE participation. The MBE program is designed to be a continuously applicable contractual commitment.

This section also contains a provision that transit vehicle manufacturers are required to have an UMTA-approved MBE program in order to be eligible to bid on UMTA-assisted transit vehicle procurements. UMTA will issue guidelines for these MBE programs which will become part of these regulations. Once these are issued, transit vehicle contracts will be exempted from the MBE program of UMTA recipients.

Section 23.43 General Requirements for Recipients. This section sets forth language to be included in all financial assistance agreements between the Department and its recipients, and in all contracts between recipients and subrecipients and contractors. Section

Section 32.45. Required MBE Program Components. This section sets forth each of the required MBE program components. The greatest amount of detail is provided in subsections (g) and (h). These subsections address percentage goals for the dollar value of work to be awarded to MBEs and procedures to seek affirmative action on MBE participation from major suppliers and contractors and procedures to require that participating MBEs are identified by name when bids or proposals are submitted. It is the Department's view that these components are critical to the success of the MBE program.

The regulation requires two types of MBE goals—overall goals for a time period or project and contract-specific goals. The Department requires submission of the overall goals and the methodology used in establishing them, as well as the contract goal methodology, in the MBE program. Overall goals or contract specific goals may be established that may be met in a specified amount by firms which are not small as defined in the Small Business Act but which are owned and controlled by socially and economically disadvataged persons. In these contracts a specific portion of each goal will be reserved for MBEs. The Department will review the methodology to ensure to the best of its ability that goals are reasonable and attainable and not arbitrary and capricious.

Bidders and proposers must meet or exceed the contract-specific goals set by recipients by naming in their bids or proposals the names of the MBEs they will use or must demonstrate in writing that they have made every reasonable effort to this end, in order to be considered a responsive bidder or qualified proposer. Minimum reasonable efforts are specified, including efforts to obtain bonding for MBE subcontractors. A bidder who rejects an MBE subbid which is not the lowest subbid received, but is reasonable, may not meet the reasonable efforts test. Because MBE participation is a condition of responsiveness, the bidder must determine if rejection of a nonlow but reasonable subbid from an MBE and thus failure to achieve MBE goals is likely to cause its bid to be rejected as nonresponsive.

This section makes MBE goal achievement a factor in determining the responsiveness of a bidder and thus it is as important in winning the bid as adherence to the technical specifications. It assures reasonable MBE participation before the contract is awarded.

This section also requires an applicant/recipient to have available an MBE directory. Applicants/recipients in the same geographical area are encouraged to share directories and to make use of existing Federal, state, and local directories.

Section 23.47 Maintenance of Records and Reports. This section describes the records and reports which must be developed by the recipient to show compliance with the regulation and implementation of its MBE program and to enable the Department to report to the President and the Department of Commerce on the MBE participation in this major area of contracting. Reports are designed to be as minimal as possible, tying into existing contract reporting requirements.

Subpart D—Compliance and Enforcement

This subpart describes the compliance and enforcement procedures of the Department in effectuating this regulation in both direct DOT contracts and in DOT financial assistance programs.

Section 23.61 Appeals of Denials of Certification as an MBE. This section enables aggrieved firms to appeal to the Secretary regarding a denial of certification issued pursuant to § 23.7 which they believe is in error. Due to staffing limitations, third parties are not considered appellants, but may advise the Secretary of pertinent information.

Section 23.63 Complaints. This section enables a person to file a complaint with the Secretary alleging a violation of this regulation. Due to staffing limitations, third parties are not considered complainants but may advise the Secretary of pertinent information.

Section 23.65 Compliance Reviews of Recipients, Contractors, and Other Participants. This section describes the compliance review process, beginning with the desk audits, and continuing with on-site reviews where necessary, and resulting in a compliance or noncompliance determination.

Section 23.67 Conciliation Procedures for Direct DOT Contracts. This section prescribes the informal procedures to be used in attempting to resolve findings of probable noncompliance with this regulation.

Section 23.69 Enforcement Proceedings for Direct DOT Contracts.

This section establishes the procedures which are used when conciliation fails to achieve compliance. Available remedies include withholding of progress payments, suspension of the contract, termination of the contract, or debarment from eligibility for DOT contracts.

Section 23.71 Conciliation Procedures for Financial Assistance Programs. This section sets forth the informal procedure to be used in attempting to resolve findings of probable noncompliance with the financial assistance portion of this regulation.

Section 23.73 Enforcement Proceedings for Financial Assistance Programs. This section prescribes the procedures which are used when conciliation fails to achieve compliance in the financial assistance program.

Section 23.75 Emergency Enforcement Procedure for Direct DOT Contracts or Financial Assistance Programs. This section establishes an expedited procedure which may be invoked by the Secretary if he/she determines that the regular conciliation and enforcement procedures are inadequate to enforce this regulation and detrimental to the Government in a specific instance. Sanctions are imposed following a finding of noncompliance.

Section 23.77 Willful Provision of Incorrect Information. This section states that whenever the Department or a recipient believes that a firm or person has willfully and knowingly provided false information, the DOT General Counsel shall be advised and may initiate debarment procedures or refer the matter to the Department of Justice.

Schedules A and B. These schedules request information to assist the Department and its recipients in determining whether a firm is owned and controlled in both form and substance by socially and economically disadvantaged persons. They must be completed by those MBEs and joint ventures who wish to participate under our program and are not 8(a) certified.

Issued in Washington, D.C., on May 9, 1979.

Brock Adams,

Secretary of Transportation.

Title 49 is amended by adding a new Part 23 to read as follows:

PART 23—PARTICIPATION BY MINORITY BUSINESS ENTERPRISE IN CONTRACTS AND PROGRAMS FUNDED BY THE DEPARTMENT OF TRANSPORTATION

Subpart A—General

Subpart B—Direct Department of Transportation Contracts

Subpart C—Department of Transportation Financial Assistance Programs

Subpart D—Compliance and Enforcement

Subpart A—General

§ 23.1 Purpose.

(a) The purpose of this part is to effectuate the Department of Transportation's program to support the full participation of firms owned and controlled by socially and economically disadvantaged individuals, particularly minorities and women, (MBEs) in our free enterprise system. It is the policy of the Department of Transportation to encourage and increase the participation of minority business enterprises in contracts and programs funded by the Department. This includes assisting MBEs throughout the life of direct and DOT-assisted contracts in which they participate.

(b) This part implements in part section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95-599); and section 8(d) of the Small Business Act of 1953, as amended (Pub. L. 95-507); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); the Federal Highway Acts, as amended (Title 23 of the U.S. Code); and the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.).

§ 23.3 Applicability.

This part applies to any direct or DOT-assisted contract or program where funds are made available to members of the public for accomplishing the mission of DOT. Direct and DOT-assisted contracts, including all subcontracts thereunder, which are to be performed entirely outside the United States, its possessions, Puerto Rico, and the North Mariana Islands, are exempted from this part.

§ 23.5 Definitions.

(1) "Affirmative action" means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to fully involve minority business enterprises in contracts and programs funded by the Department.

(2) "Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for DOT financial assistance; and "application" means such an application, request, or plan.

(3) "Compliance" means the condition existing when a recipient or contractor has met and implemented the requirements of this part. "Probable compliance" means the condition existing when a recipient or contractor is likely to have met and implemented the requirements of this part but a final determination cannot be made.

(4) "Contract" means a mutually binding legal relationship or any modification thereof at any tier obligating the seller to furnish supplies or services including construction and the buyer to pay for them. "Direct contract" means a contract or any modification thereof between the Department and a contractor or lessee.

(5) "Contractor" means one who participates, through a contract with the Department, with a recipient, or with another contractor, at any tier, in any contract or program covered by this part, and includes lessees.

(6) "Department" or "DOT" means the Department of Transportation, including its operating elements.

(7) "DOT-assisted contract" means any contract or modification thereof between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification thereof between a recipient and a lessee.

(8) "DOT financial assistance" means any grant, loan, loan guarantee, contract (other than a direct contract), or any other arrangement by which the Department or the United States Railway Association provides or otherwise makes available assistance to a recipient in the form of:

(i) Funds;

(ii) Guarantees authorized by statute as financial assistance;

(iii) Services of Federal personnel;

(iv) Real or personal property or any interest in, or use of such property, including transfers or leases of such property for less than fair market value or for reduced consideration.

(9) "Departmental element" means the following parts of DOT:

(i) The Office of the Secretary (OST);

(ii) The Federal Aviation Administration (FAA);

(iii) The United States Coast Guard (USCG);

(iv) The Federal Highway Administration (FHWA);

(v) The Federal Railroad Administration (FRA);

(vi) The National Highway Traffic Safety Administration (NHTSA);

(vii) The Urban Mass Transportation Administration (UMTA);

(viii) The St. Lawrence Seaway Development Corporation (SLSDC); and

(ix) The Research and Special Programs Administration (RSPA).

(10) "Joint venture" means an association of two or more businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge.

(11) "Lessee" means a business that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(12) "Minority" means a person who is:

(i) Black (a person having origins in any of the black racial groups of Africa);

(ii) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(iv) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

(13) "Minority business enterprise" or "MBE" means a small business concern, as defined pursunt to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by socially and economically disadvantaged individuals. For the purposes of this part, owned and controlled means a business:

(i) Which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) Whose management and daily business operations are controlled by one or more such individuals.

(14) "MBE coordinator" means the official designated by the head of the Department element to have overall responsibility, in cooperation with the Director of Civil Rights of the Departmental element, if the Director of Civil Rights is not the MBE coordinator, for promotion of minority business enterprise in his/her Departmental element.

(15) "Noncompliance" means the condition existing when a recipient or contractor has failed to meet and implement the requirements of this part.

(16) "Primary recipient" is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

(17) "Program" means undertaking by recipient to use DOT financial assistance.

(18) "Recipient" means any entity, public or private, including a primary recipient, to whom DOT financial assistance is extended, directly or through another recipient, for any program.

(19) "Secretary" means the Secretary of Transportation or any person whom he/she has designated to act for him/her in the matter concerned.

(20) "Set-aside" or "MBE set-aside" means a procurement technique which limits consideration of bids or proposals to those submitted by MBEs.

(21) "Socially and economically disadvantaged individual" means a citizen of the United States or person lawfully residing in the United States or its possessions, Puerto Rico, or the North Mariana Islands who is a minority, woman regardless of race or ethnicity, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

§ 23.7 Certification of the eligibility of minority business enterprises.

(a) To ensure that this part benefits MBEs which are owned and controlled in both form and substance by one or more socially and economically disadvantaged individuals, Schedules A and B are used by DOT and by its recipients to certify firms who wish to participate as MBEs in direct or DOT-assisted contracts as eligible under the definition of MBE in this part.

(b) Each business, which is not a joint venture, which wishes to participate as a MBE under this part in a direct or DOT-assisted contract shall complete and submit Schedule A. Each business which wishes to participate as a joint venture MBE under this part in direct or DOT-assisted contracts shall complete and submit Schedule B. In addition, the MBE partner of the joint venture shall complete and submit Schedule A. The MBE or joint venture shall submit the schedule(s) either with the bid or proposal for transmittal to the contracting agency (a Departmental element or a DOT recipient, as appropriate), or shall state in writing that the information has already been submitted to the contracting agency or shall state in writing that it has been certified by or has submitted the same information to another Departmental element or another Federal agency using the same MBE definition and ownership and control criteria as DOT or by the Small Business Administration under section 8(a) of the Small Business Act. The schedule(s) shall be subscribed and sworn to by the authorized representative of the business entity.

(c) The following standards are used by the Department and shall be used by its recipients in determining whether a firm is owned and controlled by one or more socially and economically disadvantaged individuals and shall therefore be certified as an MBE. Businesses aggrieved by the determination may appeal in accordance with procedures set forth in Subpart D, §23.61.

(1) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community.

(2) An eligible minority business enterprise under this part shall be an independent business. The ownership and control of the socially and economically disadvantaged individuals shall be real, substantial, and continuing and shall go beyond the ownership of the firm as reflected in its ownership documents. The socially and economically disadvantaged owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by a examination of the substance rather than form of arrangements.

(3) The socially and economically disadvantaged owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There shall be no restrictions through, for example, by-law provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise which prevent the socially and economically disadvantaged owners, without the cooperation or vote of any owner who is not socially and economically disadvantaged from making a business decision of the firm.

(4) If the owners of the firm who are not socially and economically disadvantaged or disproportionately responsible for the operation of the firm, then the firm is not controlled by socially and economically disadvantaged individuals and shall not be considered an MBE within the meaning of this part. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purposes of this part, be considered as controlling the business.

(5) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as a minority business enterprise under this part shall be held directly by socially and economically disadvantaged individuals. No securities held in trust, or by any guardian for a minor, shall be considered as held by socially and economically disadvantaged individuals in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

(d) In addition to the above standards, the Department and its recipients shall give special consideration to the following circumstances in determining eligibility under this part.

(1) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

(2) A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee owner has management responsibilities and capabilities discussed in §§ 23.5(12) and 23.7(c).

(3) Any relationship between an MBE and a business which is not an MBE which has an interest in the MBE is carefully reviewed to determine if the interest of the non-MBE conflicts with the owner and control requirements of this section.

(e) A joint venture is eligible under this part if the MBE partner of the joint venture meets the standards for an eligible MBE set forth above and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profts of the joint venture.

(f) A joint venture is eligible to compete in an MBE set-aside under this part if the MBE partner of the joint venture meets the standards of an eligible MBE set forth above, and the MBE partner shares at least 51% in the ownership, control, and management responsibilities, risks, and profits of the joint venute, and the MBE partner is responsible for a clearly defined portion of the work to be performed.

(g) A business wishing to be certified as an MBE or joint venture MBE by the Department or a recipient shall cooperate with the Department or recipient in supplying additional information which may be requested in order to make a determination.

(h) Once certified, an MBE shall update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. At any time there is a change in ownership or control of the firm, the MBE shall submit a new Schedule A.

(i) The denial of a certification by the Department or a recipient shall be final, except as provided in § 23.61, for that contract and other contracts being let by that contracting agency at the time of the denial of certification. MBEs and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future contracts.

(j) Information obtained is safeguarded from unauthorized sources.

§ 23.9 Counting MBE participation toward meeting MBE goals.

MBE participation shall be counted toward MBE goals set in accordance with § 23.45(g) or § 23.21 as follows:

(a) Once a firm is determined to be an eligible MBE in accordance with § 23.7, the total dollar value of the contract awarded to the MBE is counted toward the applicable MBE goals.

(b) Contracts with MBEs which depart from conventional industry practices and which constitute a commerically unnecessary intermediate step between a contractor or subcontractor and a contractor, recipient, or the Department are not counted toward MBE goals. The certified MBE partner of a joint venture which is eligible in accordance with the standards set forth in § 23.7 is counted toward the applicable MBE goals.

(c) An MBE which is owned and controlled by both minority males and by females is counted toward the minority and female goals in proportion to the percent ownership of each group member.

Subpart B—Direct Department of Transportation Contracts

§ 23.21 MBE goals for direct DOT contracting.

(a) The Department establishes two annual goals for MBE utilization, expressed as a percentage of the total Department direct contracting dollars, at the beginning of each Federal fiscal year. One goal is for the utilization of minority-owned and controlled firms and one goal is for the utilization of female-owned and controlled firms. Utilization of businesses owned and controlled by minority women are counted against only one of the goals.

(b)(1) The Departmental goals are based on the minority and female goals set by each Departmental element, based on a forecast at the beginning of each fiscal year of all projected contracting activity as compared with the known availability of MBEs with appropriate capabilities.

§ 23.23 Utilization of minority business enterprise clause.

All DOT solicitations and contracts in excess of $10,000, except contracts for services which are personal in nature, contain the following clause:

(a) It is the policy of the United States that small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the Department of Transportation as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) The contractor agrees not to discriminate on the basis of race, color, national origin, or sex in the award of subcontracts or in the performance of this contract.

(d) This contract is let under the MBE policy, definition, and requirements of the Department of Transportation prescribed in 49 CFR Part 23.

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as MBEs. These subcontractors must comply with the requirements of 49 CFR Part 23, § 23.7, however.

§ 23.25 Minority business enterprise subcontracting program.

(a) Before the award of any contract to be let, or any amendment or modification to any contract let, by DOT which may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000 in the case of all other contracts and which offers subcontracting possibilities, the apparent successful offeror/low bidder shall submit to the procuring Departmental element a subcontracting program which incorporates the information prescribed in paragraph (c) of this section. The subcontracting program shall be included in and made a material part of the contract. If the apparent successful offeror/low bidder fails to submit an acceptable subcontracting program which, in the determination of the Departmental element, provides the maximum practicable opportunity for MBEs to participate in the performance of the contract, such offeror/bidder shall become nonresponsible and ineligible to be awarded the contract. Bidders and offerors shall develop their programs in accordance with Subpart B, § 23.29, and Subpart C, §§ 23.45 (b), (c), (e), and (i). Prior compliance of the offeror/bidder with other such subcontracting programs shall be considered by DOT in determining the responsibility of that offeror/bidder for the award of the contract.

(b) The MBE subcontracting programs submitted pursuant to the requirements of paragraph (c) of this section are incorporated into the contract and are subject to compliance reviews by DOT officials. Failure to carry out these programs is a material breach of contract and may result in enforcement action set forth in Subpart D of this part.

(c) The MBE subcontracting program required by paragraph (a) of this section shall contain the following components:

(1) Designation of a liaison officer within the employ of the bidder/offeror who will administer the program, and a description of the duties of the liaison officer.

(2) A description of efforts that the bidder/offeror will take to assure that MBEs have an equitable opportunity to compete for subcontracts;

(3) Assurance that the bidder/offeror will include the clause in § 23.23 in all subcontracts offering subcontracting opportunities and that the bidder/proposer will require all non-MBE subcontractors who receive subcontracts in excess of $1,000,000, in the case of a contract for construction of any public facility, or in excess of $500,000 in the case of all other contracts to adopt and implement an MBE subcontracting program similar to the program required by this subsection;

(4) Assurance that the bidder/offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the Department in order to determine the extent of compliance by the bidder/offeror with the MBE subcontracting program;

(5) A recitation of the types of records the bidder/offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements set forth in this MBE subcontracting program, including the establishment of a source list, and efforts to identify and award subcontracts to MBEs; and

(6) Percentage goals for the utilization of MBEs as subcontractors where such goals have not been established by DOT pursuant to § 23.27.

(d) Prime contractors shall bring to the attention of the awarding Departmental element situations in which regularly scheduled progress payments are not made to MBE subcontractors.

(e) The requirements in paragraph (c) of this section and paragraph (a) of § 23.23 are in lieu of the provisions of Federal Procurement Regulations, Subpart 1–1.13, Minority Business Enterprise.

§ 23.27 MBE goals.

(a) Solicitations with reasonable subcontracting opportunities for which there are known available MBEs with capabilities consistent with contract requirements in the relevant geographical area, which is the broadest possible area to expect MBEs to find it in their business interest to participate, include MBE goals. Minority and female participation goals are stated as a percentage of the dollar value of the work to be performed and contain the following requirements in addition to the clause in § 23.23(a) and, where applicable, the MBE subcontracting program clause of § 23.25. In selected contracts DOT may establish goals that may be met in a specified amount by firms which are not small as defined in the Small Business Act but which are owned and controlled by socially and economically disadvantaged persons. In these contracts a specific portion of each goal will be reserved for MBE. A bidder/offeror who fails or refuses to comply with these requirements is not awarded the contract. The commitments made pursuant to these requirements are incorporated into the contract and are subject to compliance reviews by DOT officials. Failure to carry out these commitments may result in enforcement action set forth in Subpart D.

(1) To be responsive, a bidder responding to an invitation for bid shall include in its bid the names of MBEs to whom it intends to award subcontracts, the dollar value of these subcontracts, and the scope of the work.

(2)(i) An offeror responding to a request for proposal shall include in its proposal the names of MBEs to whom it proposes to award subcontracts and a brief description of subcontract work. MBE utilization shall be a factor in the evaluation of the proposal.

(ii) In the cost proposal, the offeror shall indicate the dollar value of the MBE subcontracts.

(3) Bidders/offerors who fail to identify MBEs by name, scope of work, and dollar value of work in their bids/proposals sufficient to meet the MBE percentage goals shall demonstrate in writing in their bids/proposals that

reasonable efforts were made to involve MBEs. Such documentation of reasonable efforts shall include but not be limited to:

(i) Copies of written notification to MBEs that their interest in the procurement is solicited;

(ii) A statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goals;

(iii) A statement of the efforts made to negotiate with MBEs including at a minimum:

(A) The names, addresses, and telephone numbers of MBEs who were contacted;

(B) A description of the information provided to MBEs regarding the plans and specifications for portions of the work to be performed; and

(C) A statement of the reasons why additional agreements with MBEs, if needed to meet the stated goals, were not reached;

(iv) A statement of efforts made to assist MBEs contacted who need assistance in obtaining bonding and insurance which the bidder/offeror requires.

(v) As to each MBE contacted but which the bidder/offeror considers to be not qualified, a statement of the reasons for the bidder's/offeror's conclusion.

(4) If the bidder/offeror does not meet the MBE goals, price alone shall not be an acceptable basis for which the bidder/offeror may reject an MBE subbid unless the bidder/offeror can show to the satisfaction of the Department that no reasonable price can be obtained from an MBE. A determination of reasonable price is based on such factors as the Department's estimate for the work under a specific subcontract, the bidder/offeror's own estimate for the specific subcontract, and the average of the prices quoted for the specific subcontract.

(5) Only a bidder/offeror who meets the goals or demonstrates reasonable efforts to that end as defined in paragraphs (a) (3) and (4) of this section to the satisfaction of the Department in its bid/proposal shall be eligible to be awarded the contract.

(6) The MBEs identified in the bid/proposal shall comply with § 23.7(b) by submitting the required information in the bid/proposal. If the Department prior to the contract award refuses in accordance with § 23.7 to certify any one or more of the MBEs identified in the bid/proposal, the bidder/offeror shall make reasonable efforts as defined in paragraphs (a) (3) and (4) of this section within 15 calendar days to substitute another eligible MBE, subject to the approval of the Department. During the course of the contract, the contractor shall receive the approval of the Department before making substitutions for any MBE subcontractor listed in the bid/proposal.

§ 23.29 MBE set-asides.

(a) A decision to use an MBE set-aside is based on the following factor which are documented in writing:

(1) A set-aside is necessary to ensure MBE participation and to meet the MBE goals set by the Departmental element.

(2) Prior MBE involvement has been minimal in this type of contract.

(3) At least three MBEs with capabilities consistent with the contract requirements exist within the relevant geographical area.

(b) When a proposed contract is set-aside for competition solely among MBEs, the solicitation, entitled "Notice of Total Set-Aside for Minority Business Enterprises," states: "Bids or proposals under this contract are solicited from minority business enterprises as defined in 49 CFR Part 23 only and this contract is to be awarded only to one or more minority business enterprises. For the purposes of this contract, joint ventures meeting the criteria in 49 CFR Part 23, § 23.7(f) are eligible to compete for this contract. Bids or proposals received from firms which are not minority business enterprises shall be considered nonresponsive. No more than 35% of the dollar value of the contract may be awarded to firms which are not minority business enterprises. Bidders or proposers shall complete and submit with their bids or proposals Schedules A and/or B of 49 CFR Part 23, as appropriate, or certify that this information is already on file with the Department of Transportation or state in writing that they are currently certified by another Federal agency, using the same MBE definition and ownership and control criteria as DOT, or state in writing that they have been certified by the Small Business Administration under section 8(a) of the Small Business Act."

§ 23.31 MBE certification.

The Department makes all decisions relating to the eligibility of MBEs participating in direct DOT contracts pursuant to § 23.7. Prior to the award of the contract, the Departmental element reviews the completed Schedules A and/or B, as appropriate, submitted with the apparent low bid or apparent successful proposal or accepted forms of other Federal agencies, and any other information deemed necessary to determine MBE and/or joint venture eligibility under this part. Section 8(a) certifications are accepted without review. Notices of approval or denial are sent. Records are maintained regarding determinations for use in appeals. Only after the MBE certifications are made is the contract awarded.

§ 23.33 Maintenance of records and reports by direct DOT contractors.

(a) Contractors awarded contracts incorporating the MBE requirements set forth in § 23.25 and/or § 23.27 shall submit an "Optional Form 61" report which summarizes the number and dollar amounts of subcontract awards made to minority business enterprises, as defined in this part, during the quarter which is being reported. This report shall be submitted on the last day of January, April, July, and October of each year.

(b) In addition, contractors awarded contracts incorporating the MBE requirements set forth in §§ 23.25 and 23.27 shall maintain records showing:

(1) Procedures and actions which have been adopted to comply with the requirements of the contract; and

(2) Documentation supporting the information supplied in "Optional Form 61".

(c) These records shall be available upon the request of an authorized officer or employee of the Government and shall assist the Department in monitoring the contractor's compliance with its MBE commitments.

Subpart C—Department of Transportation Financial Assistance Programs

§ 23.41 General.

(a) All applicants for grants, loans, project acceptance, authorization to proceed, or other necessary Departmental clearance for financial assistance meeting the following criteria who submit applications under which DOT-assisted contracts will be let shall submit to the Departmental element for approval as part of their application an affirmative action program to promote minority business enterprise, hereinafter referred to as "MBE program", containing the components set forth in paragraphs (e) through (h) of § 23.45.

(1) Applicants for funds in excess of $250,000 exclusive of transit vehicle purchases under sections 3, 5, and 17 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

(2) Applicants for funds in excess of $100,000 under sections 6 and 8 of the Urban Mass Transportation Act of 1964, as amended;

(3) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration;

(4) Applicants for funds in excess of $250,000 awarded by the Federal Aviation Administration to general aviation airports;

(5) Applicants for funds in excess of $400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(6) Applicants for planning funds in excess of $75,000 awarded by the Federal Aviation Administration.

(b) All applicants for grants, loans, project acceptance, authorization to proceed, or other necessary Departmental clearance for financial assistance meeting the following criteria who submit applications under which DOT-assisted contracts will be let shall submit to the Departmental element for approval as part of their application an MBE program containing all components set forth in § 23.45:

(1) Applicants for Federal-aid highway program funds;

(2) Applicants for funds in excess of $500,000 exclusive of transit vehicle purchases under sections 3, 5, and 17 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

(3) Applicants for funds in excess of $200,000 under sections 6 and 8 of the Urban Mass Transportation Act of 1964, as amended;

(4) Applicants for funds in excess of $500,000 awarded by the Federal Aviation Administration to large, medium and small hub airports; and

(5) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the United States Railway Association.

(c) Applications and funding agreements are signed and authorizations to proceed are approved only after the applicant's MBE program has been approved by the Departmental element.

(d) This requirement is effective with applications, with authorizations to proceed requested by Federal-aid highway program recipients, and with requests for draw downs from the U.S. Railway Association submitted 60 days or more following the effective date of this part.

(e) Applicants meeting the criteria set forth in paragraph (b) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these programs to conform to the requirements of this part prior to the approval of their next application.

(f) A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is exceptional and how the modified program complies substantially with this part. If the applicant asserts that State or local law prohibits it from including a particular provision in its program, the applicant shall provide copies of all legal citations supporting the claim. The head of the Departmental element may, under appropriate circumstances, grant deviations or exemptions from this subpart.

(g) The MBE program prepared by the applicant and the commitment made by the applicant to carry out the MBE program is incorporated into and becomes part of this and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department, and shall subject the recipient to the sanctions noted in Subpart D of this part.

(h) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(i) Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(j) Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have an UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify that they have such a program as a condition for bidding on UMTA-assisted contracts.

§ 23.43 General requirements for recipients.

(a) Each recipient shall agree to abide by the statements in paragraphs (a) (1) and (2) of this section. These statements shall be included in the recipient's DOT financial assistance agreement and in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor.

(1) *"Policy.* It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. This agreement is awarded under the MBE policy and requirements prescribed in 49 CFR Part 23.

(2) *"MBE Obligation.* (i) The recipient or its contractor agrees to provide full and fair utilization of minority business enterprises and shall use its best efforts to ensure that minority business enterprises as defined in 49 CFR Part 23 shall have maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have an equitable opportunity to compete in all contracting activities. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

(b) Each DOT financial assistance agreement shall include the following: "If as a condition of assistance the recipient has submitted and the Department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program the Department shall impose such sanctions as noted in 49 CFR Part 23, Subpart D, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance."

(c) The recipient shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in § 23.43(a) and to use good faith efforts to utilize qualified MBEs as contractors or subcontractors shall constitute a breach of contract and, after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

§ 23.45 Required MBE program components.

(a) *A policy statement, expressing a commitment to utilize MBEs in all aspects of contracting to the maximum extent feasible.* (1) The applicant's policymaking body (Board, Council, etc.) shall issue a policy statement, signed by the chairperson, which expresses its commitment to the program, outlines the various levels of responsibility and states the objectives or the program. The policy statement shall be circulated throughtout the applicant's organization and to minority, female, and non-minority community and business organizations.

(b) *The designation of liaison officer, as well as such support staff as may be necessary and proper to adminster the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff.* (1) An MBE liaison officer of senior level authority and adequate staff to administer the MBE program shall be appointed by the chief executive officer.

(2) The MBE liaison officer shall be responsible for developing, managing, and implementing the MBE program on a day-to-day basis; for carrying out technical assistance activities for MBEs; and for disseminating information on available business opportunities to ensure that MBEs are provided and equal opportunity to bid on the applicant's contracts.

(c) *Procedures to ensure that MBEs have an equitable opportunity to compete for contracts and subcontracts.* Affimative action tehcniques shall be developed and undertaken to facilitate MBE participation in contracting activities. These techniques include:

(1) Arranging solicitations, time for the presentation of bids, quantities, specification, delivery schedules so as to facilitate the participation MBEs.

(2) Providing assistance to MBEs in overcomming barriers such as inability to obtain bonding, financing, and technical assistance.

(3) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) *Opportunities for the utilization of banks owned and controlled by socially and economically disadvantaged individuals.* (1) The applicant/recipient shall thoroughly investigate the full extent of services offered by banks owned and controlled by socially and economically disadvantaged individuals in its community and determine the most feasible area in which to utilize the services of these banks.

(2) Prime contractors shall also be encouraged to utilize the services of banks owned and controlled by socially and economically disadvantaged individuals.

(e) *MBE directory.* (1) The applicant/recipient shall have available a directory or source list to facilitate identifying MBEs with capabilities relevant to general contracting requirements and to particular solicitations. The directory shall be made available to bidders and proposers in their efforts to meet the MBE requirements. It shall specify which firms have been determined to be eligible MBEs by the Department or applicant/recipient in accordance with procedures set forth in § 23.7.

(f) *Procedures to ascertain the eligibility of MBEs and joint ventures involving MBEs.* (1) To ensure that its MBE program benefits only MBEs and joint ventures involving MBEs owned and controlled by socially and economically disadvantaged individuals, the recipient shall certify the eligibility of MBEs and joint ventures involving MBEs who are named by the apparent low bidder/successful proposer in accordance with § 23.7. Any firm certified by the Department shall not be recertified by the recipient. Recipients may, at their own discretion, accept certifications made by other DOT recipients.

(2) The recipient shall approve all substitutions of subcontractors before bid opening and during contract performance.

(g) *Percentage goals for the dollar value of work to be awarded to MBEs.* (1) Once the applicant/recipient has reviewed proposed contracting to identify those contracting activities which have the greatest potential for MBE participation shall be set which are practical and related to the potential availability of MBEs in desired areas of expertise.

(2) The applicant/recipient shall establish two types of MBE goals:

(i) Overall goals which provide a benchmark for achievement of the MBE program within a specified time frame, such as one year, or for a specific project, such as construction of a facility; and

(ii) Contract goals which are targets set on a specific contract which the bidder or proposer must make every reasonable effort to meet or exceed, as an MBE prime contractor or through joint ventures with or subcontracts to MBEs, in order to be awarded the contract.

(3) Overall goals and a description of the methodology used in establishing them shall be submitted in the applicant's MBE program. When the overall goals expire, new overall goals shall be set and submitted to the Department for approval. Contract goals need not be submitted in the applicant's MBE program, but the program shall contain a description of the methodology to be used in establishing them. Contract goals may require approval by the Department prior to contract solicitation.

(4) Separate goals shall be set for firms owned and controlled by minorities and firms owned and controlled by women. Firms owned and controlled by minority women shall be counted toward only one goal.

(5) Overall or contract goals may be established that include firms that are not small businesses as defined in the Small Business Act but that are owned and controlled by socially and economically disadvantaged persons as long as a specified portion of the goals is reserved for MBEs.

(6) The applicant shall consider the following factors in setting overall goals:

(i) Overall goals shall be based on projection of the number and types of contracts to be awarded by the applicant;

(ii) Because the purpose of the MBE program is to increase participation by both existing and new firms formed in response to increased opportunity, overall goals shall take into consideration those firms which currently exist and those firms which are likely to be formed. The population of the minority groups within the area may be considered as one factor in assessing the current and potential number of MBEs; and

(iii) Overall goals shall be based on past results of the applicant's/recipients's efforts to contract with MBEs and the reasons for the high or low level of those results.

(7) The applicant/recipient shall review the overall goals at least annually. The review process shall analyze projected versus actual MBE participation duirng the previous year. The necessary revisions shall be made based on the analysis and submitted to the Department for approval.

(8)(i) The setting of goals for specific contracts is an attempt to match proposed contracts with available qualified MBEs.

(ii) The geographic area for assessing MBE availability varies with the type of contracts. It is the broadest possible area from which to expect MBEs to find it in their business interest to participate. The relevant geographic area is no smaller for MBEs than it would be for non-MBEs, but may be larger.

(h) *Procedures to seek affirmative action on MBE participation from major suppliers or contractors and procedures to require that participating MBEs are identified by name when bids or proposals are submitted.* (1) The recipient shall indicate in solicitations issued pursuant to DOT financial assistance which provide opportunities for MBE participation goals for the utilization of firms owned and controlled by minorities and firms owned and controlled by women. Goals may be established that include firms that are not small businesses as defined in the Small Business Act but that are owned and controlled by socially and economically disadvantaged persons as long as a specified portion of the goal is reserved for MBEs. Such solicitations shall require that the bidder or proposer submit in its bid or proposal the names of MBE subcontractors or joint venture involving MBEs scope of work, and dollar value of each such proposed subcontract in order for the bid or proposal to be considered. Agreements between a bidder/proposer and an MBE whereby the MBE promises not to provide quotations to other bidders/proposers to subcontact to another prime contractor are prohibited.

(2) Bidders/proposers who fail to identify MBEs by name, scope of work, and dollar value of work in their bids/proposals sufficient to meet the MBE percentage goals shall demonstrate in writing in their bids/proposals that reasonable efforts were made to involve MBEs. Such documentation of reasonable efforts shall include but not be limited to:

(i) Certification of attendance by prime bidders/proposers at the pre-bid meeting, if any;

(ii) Advertisement in trade association newsletter and minority-owned media for at least 20 days, when time permits, before bids are due of a solicition for specific quotations;

(iii) Copies of written notification to MBEs that their interest in the contract is solicited;

(iv) A statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal;

(v) A statement of the efforts made to negotiate with MBEs for specific subbids including at a minimum:

(A) The names, addresses, and telephone numbers of MBEs who were contacted;

(B) A description of the information provided to MBEs regarding the plans and specifications for portions of the work to be performed; and

(C) A statement of the reasons why additional prospective agreements with MBEs, if needed to meet the stated goals, were not reached.

(vi) A statement of the efforts made to assist the MBEs contacted who need assistance in obtaining bonding and insurance which the bidder/proposer requires.

(vii) As to each MBE contacted but which the bidder/proposer considers to be not qualified, a statement of the reasons for the bidder's/proposer's conclusions.

(3) The solicitation shall state that if the bidder/proposer does not meet the MBE goals, price alone shall not be an acceptable basis for which the bidder or proposer may reject an MBE subbid unless the bidder or proposer can show to the satisfaction of the applicant that no reasonable price can be obtained from an MBE. The applicant's determination of reasonable price should be based on such factors as its engineer's estimate for the work under a specific subcontract, the low bidder or proposer's own estimate for the specific subcontract, and the average of the prices quoted for the specific subcontract.

(4) A bidder's failure to identify MBEs in its bid sufficient to meet the minority and female goals or to show meaningful reasonable efforts to that end shall be grounds for finding the bid nonresponsive and the bidder shall not be eligible to be awarded the contract.

(5) A proposer who fails to identify MBEs in its bid sufficient to meet the minority and female goals or to show meaningful reasonable efforts to that end shall not be eligible to be awarded the contract.

(6) The recipient shall review the contracor's MBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the recipient any situations in which regularly scheduled progress payments are not made to MBE subcontractors.

(7) The contractor shall keep records and documents for three years following the performance of a contract to indicate compliance. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by authorized representatives of the applicant or the Department and shall be submitted to the applicant or the Department upon request together with any other compliance information which such representatives may require.

(8) The specific solicitation language incorporating the requirements of this subsection shall be included in the MBE program.

(i) *A description of the methods by which the recipient will require subrecipients, contractors, and subcontractors to comply with applicable MBE requirements.* (1) The applicant shall include in its MBE program a description and the specific language of any preconditions to subgrants or contracts, including subcontracting programs, it awards with DOT funds in addition to those required by paragraph (h) of this section. It shall specify on what size and/or type of contracts and subgrants it includes such preconditions. The description shall contain a summary of the ways the applicant provides help to its subrecipients, contractors, and subcontractors in drafting and implementing their programs for using MBEs.

(2) Any MBE subcontracting programs required by the applicant/recipient shall be submitted to the applicant/recipient by the apparent low bidder/successful proposer. The bidders/proposers shall be advised in the solicitation that failure to submit the required MBE subcontracting program shall make the bidder/proposer ineligible for award.

(j) *Procedures by which the applicant/recipient will implement MBE set-asides.* (1) Where allowable under local law and determined by the applicant/recipient to be necessary to met MBE goals, procedures to implement MBE set-asides shall be established. MBE set-asides shall be used only in cases where at least three MBEs with capabilities consistent with contract requirements exist so as to permit competition.

§ 23.47 Maintenance of records and reports.

(a) In order to monitor the progress of its MBE program the applicant/recipient shall develop a recordkeeping system which will identify and assess MBE contract awards, prime contractors' progress in achieving MBE subcontract goals, and other MBE affirmative action efforts.

(b) Specifically, the applicant/recipient shall maintain records showing:

(1) Procedures which have been adopted to comply with the requirements of this part.

(2) Awards to MBEs. These awards shall be measured against projected MBE awards and/or MBE goals. To assist in this effort, the applicant shall obtain regular reports from prime contractors on their progress in meeting contractual MBE obligations.

(3) Specific efforts to identify and award contracts to MBEs.

(c) Records shall be available upon the request of an authorized officer or employee of the government.

(d)(1) The recipient shall submit reports conforming in frequency and format to existing contract reporting requirements of the applicable Departmental element. Where no such contract reporting requirements exist, MBE reports shall be submitted quarterly.

(2) These reports shall include as a minimum:

(i) The number of contracts awarded to MBEs;

(ii) A description of the general categories of contracts awarded to MBEs;

(iii) The dollar value of contracts awarded to MBEs;

(iv) The percentage of the dollar value of all contracts awarded during this period which were awarded to MBEs; and

(v) An indication of whether and the extent of which the percentage met or exceeded the goal specified in the application.

Subpart D—Compliance and Enforcement

§ 23.61 Appeals of denials of certification as an MBE.

(a) *Filing.* Any firm who believes that it has been wrongly denied certification as an MBE or joint venture under section 23.7 by the Department or a recipient of DOT financial assistance may file an appeal in writing, signed and dated, with the Department. The appeal shall be filed no later than 180 days after the date of denial of certification. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as an MBE or joint venture may advise the Secretary. This information is not considered an appeal pursuant to this section.

(b) *Decision to Investigate.* The Secretary ensures that a prompt investigation is made of those cases with investigative merit, which are not being reviewed on the merits by the Comptroller General, pursuant to prescribed DOT Title VI investigation procedures.

(c) *Status of Certification During the Investigation.* The Secretary may, at his/her discretion, deny the MBE or joint venture in question eligibility to participate as an MBE in direct and/or DOT-assisted contracts let during the pendancy of the investigation, after providing the MBE or joint venture in question an opportunity to show cause by written statement to the Secretary why this should not occur.

(d) *Cooperation in Investigation.* All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this part.

(e) *Determinations.* The Secretary makes one of the following determinations and so informs the MBE or joint venture in writing of the reasons for the determination:

(1) The MBE or joint venture is certified under § 23.7; or

(2) The MBE or joint venture is not certified under § 23.7 and is denied eligibility to participate as an MBE in any direct or DOT-assisted contract until a new application for certification is approved by the Departmental Director of Civil Rights.

§ 23.63 Complaints.

(a) *Filing.* Any person who believes himself or herself to be subjected to a violation of this part may file a complaint in writing, signed and dated, with the Department. The complaint shall be filed no later than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was disclosed. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing. Third parties who have reason to believe that another person has been subjected to a violation of this part may advise the Secretary. This information is not considered a complaint pursuant to this section.

(b) *Decision to Investigate.* The Secretary ensures that a prompt investigation is made of those cases with investigative merit, which are not being reviewed on the merits by the Comptroller General, pursuant to prescribed DOT Tile VI investigation procedures.

(c) *Cooperation in Investigation.* The respondent to the complaint shall cooperate fully with the investigation. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of this part.

(d) *Determinations.* Upon completion of the investigation, the Secretary informs the recipient or contractor and complainant of the results of the investigation in writing. If the investigation indicates a failure to comply with this part, the notice provides that if the matter is not conciliated within 30 days of the date of the notice, enforcement proceedings shall begin. Conciliation procedures are carried out by the Secretary in accordance with § 23.67 or § 23.71, as appropriate. Enforcement proceedings are carried out in accordance with § 23.69 or § 23.73, as appropriate.

(e) *Intimidatory or Retaliatory Acts Prohibited.* No recipient, contractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part, or because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding, or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant shall be advised for the purpose of waiving the privilege.

§ 23.65 Compliance reviews of recipients, contractors, and other participants.

(a) *Desk Audit.* All compliance reviews conducted after financial assistance has been approved or contracts have been awarded begin with a desk audit. The desk audit is a review of all material and information concering the recipient's MBE performance, or in the case of a direct contract, a review of completed "Optional Form 61's".

(b) *On-Site Review.* An on-site review includes interviews, visists to project or facility sites receiving DOT funds, and inspection of any statistical or documentary materials relevant to the recipient's or contractor's performance which were not available for review during the desk audit.

(c) *Cooperation.* The contractor or recipient shall cooperate fully with these reviews. Failure or refusal to furnish requested information or failure to cooperate is a violation of this part.

(d) *Determination.* As a result of its review of the recipient or contractor, the Departmental element civil rights staff makes one of the following determinations:

(1) The recipient or contractor is in compliance or probable compliance with its MBE obligations; or.

(2) The recipient or contractor is not in compliance with its MBE obligations in certain specified respects. Proceedings shall be begun in accordance with § 23.65 or § 23.71 as appropriate.

§ 23.67 Conciliation procedures for direct DOT contracts.

(a) *Notice of Probable Noncompliance.* Except as specified in § 23.75, whenever the responsible office of civil rights makes a probable noncompliance finding, notice is sent by the procurement office registered mail, return receipt requested, describing the areas of probable noncompliance requiring the contractor to show cause, within 30 days, why enforcement proceedings should not be instituted, and offering the contractor an opportunity to conciliate. Efforts at conciliation may continue to be made as long as it appears reasonable to the head of the Departmental element that such efforts may be successful.

(1) *Successful conciliation.* If a conciliation agreement is signed by the Departmental element's office of civil rights and the contractor, it is approved or disapproved by the head of the Departmental element within 20 days of receiving it. If the head of the Departmental element disapproves the agreement, the reasons therefor are stated in writing. The head of the Departmental element may propose amendments to the agreement which are forwarded to the contractor, requiring the contractor's acceptance or rejection of the amended agreement within 20 days of receipt.

(2) *Unsuccessful conciliation.* If no agreement is signed within 30 days of the probable cause notice of noncompliance and the Departmental element office of civil rights determines that continued conciliation is unlikely to be successful, enforcement proceedings set forth in § 23.69 begin. The Department reserves the right to terminate the contract for convenience at any time during the conciliation procedures.

(b) *Effect of conciliation agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance does not act as a bar to the award of DOT contracts as long as the terms of the agreement are fulfilled.

§ 23.69 Enforcement proceedings for direct DOT contracts.

(a) Whenever conciliation efforts pursuant to § 23.67 are unsuccessful, enforcement proceedings begin. These proceedings are conducted in accordance with 49 CFR 21.15 and 21.17(a) through (d), except that the terms "applicant and recipient" mean "contractor" for the purposes of this section.

(b) If the Secretary determines that the contractor is in noncompliance with this part, he/she may direct the contracting officer to:

(1) Withhold all progress payments under the contract;

(2) Suspend the contract;

(3) Terminate the contract;

(4) Debar the contractor from eligibility for award of future direct or DOT-assisted contracts for a specific amount of time or until corrective action has been taken and approved by the Secretary, whichever is shorter; and/or

(5) Take other action which the Secretary deems appropriate.

(c) Except as provided for in paragraph (b) of this section, a contractor adversely affected by a decision under the proceedings is restored to compliance once the contractor takes complete corrective action, as required by the Department's decision, to eliminate noncompliance with this part and provides reasonable assurance that he/she shall comply fully with this part.

§ 23.71 Conciliation procedures for financial assistance programs.

(a) *Notice of Probable Noncompliance.* Whenever the responsible office of civil rights makes a probable noncompliance finding, a notice of probable noncompliance is sent promptly and in writing by registered mail, return receipt requested, describing the areas of noncompliance requiring the applicant or recipient to show cause within 30 days why enforcement proceedings or other appropriate action to insure compliance should not be instituted and offering the recipient an opportunity to conciliate. Efforts at conciliation may continue to be made as long as it appears reasonable to the head of the Departmental element that such efforts may be successful.

(1) *Successful conciliation.* If a conciliation agreement is signed by the Departmental element's office of civil rights and recipient, it is approved or disapproved by the head of the Departmental element within 20 days of receiving it. If the head of the Departmental element disapproves the agreement, the reasons therefor are stated in writing. The head of the Departmental element may propose amendments to the agreement which are forwarded to the recipient, requiring the recipient's acceptance or rejection of the amended agreement within 20 days of receipt.

(2) *Unsuccessful conciliation.* If no agreement is signed within 30 days of the probable cause notice of noncompliance and the Departmental element's office of civil rights determines that continued conciliation is unlikely to be successful, enforcement proceedings set forth in § 23.73 begin.

(b) *Effect of conciliation agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance does not act as a bar to the provision of financial assistance as long as the terms of the agreement are fulfilled. A compliance review is conducted by the Departmental element within nine months of the approval of an agreement.

§ 23.73 Enforcement proceedings for financial assistance programs.

(a) Whenever conciliation efforts pursuant to § 23.71 are unsuccessful, enforcement proceedings begin. These proceedings are conducted in accordance with 49 CFR 21.15 and 21.17.

(b) A finding of noncompliance and the imposition of any sanction pursuant to these proceedings may be made binding on all other Departmental elements by the Secretary.

§ 23.75 Emergency enforcement procedure for direct DOT contracts or financial assistance programs.

(a) *General.* Whenever the Secretary determines that the conciliation and enforcement proceedings set forth in §§ 23.67 and 23.69 or §§ 23.71 and 23.73 are inadequate for the effective enforcement of this part, he/she initiates special enforcement procedures to obtain compliance.

(b) *Notice of Probable Noncompliance.* A notice is sent, registered mail, return receipt requested, describing the areas of probable noncompliance requiring the contractor or recipient to show cause, within a specified period of time, generally not to exceed 15 days, why appropriate action to insure compliance should not be instituted. The notice states that the contractor or recipient must respond in writing or orally on the record before an official appointed by the Secretary or sanctions will be imposed.

(c) *Decision.* If the Secretary, after reviewing the contractor's or recipient's oral or written response, determines that the contractor or recipient is in noncompliance with this part, he/she imposes appropriate sanctions.

(d) A contractor or recipient adversely affected by a decision under these procedures is restored to compliance once the contractor or recipient takes complete corrective action, as required by the Department's decision to eliminate noncompliance with this part and provides reasonable assurance that he/she shall comply fully with this part.

§ 23.77 Willful provision of incorrect information.

If, at any time, the Department or a recipient has reason to believe that any person or firm has wilfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the General Counsel of the Department. He/she may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refers the matter to the Department of Justice under 18 U.S.C. 1001, as he/she deems appropriate.

Schedule A—Information for Determining Minority Business Enterprise Eligibility Under 49 CFR Part 23

1. Name of firm ____
2. Address of firm ____
3. Phone number of firm ____
4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) ____

5. Certification that the firm is a small business concern. A small business concern is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding/proposing, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (For additional information see 13 CFR PART 121.)
6. Nature of firm's business ____
7. Years firm has been in business ____
8. For corporations, enclose a copy of articles of incorporation and charter, and for other business entities, similar information indicating the legal relationship of owners and the history of the structure of the organization.

Voting interests		Securities holdings by type	
#	% ____	#	%

9. Ownership of firm
(a) Black
(b) Hispanic
(c) Asian American
(d) American Indian or Alaskan Native
(e) Subtotal Minority
(f) Nonminority Female
(g) Minority Female
(h) Subtotal Female
(i) Other
(j) Total
(Minority females should be listed under (a) through (d), as appropriate, as well as under (g). (j) is the total of (e), (f) and (i).)

(k) Identify firm's owners by name, race and sex, their years of ownership, their specific ownership percentages, and their contributions of capital and/or expertise for acquiring ownership interests.

10. Control of firm
(a) Identify by name, race and sex, those individuals who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:
(1) Financial decisions, such as
(i) Budget ____
(ii) Accounting ____
(iii) Capital investment ____
(iv) Financing ____
(v) Bonding and insurance negotiations ____
(vi) Other ____
(2) Administrative decisions, such as
(i) Operations ____
(ii) Marketing and Sales ____
(iii) Hiring and firing of management personnel ____
(iv) Jobs to be bid ____
(v) Purchases ____
(vi) Legal ____
(vii) Other ____
Include their titles, specific responsibilities and scope of authority, salaries, past experience and expertise, and their number of years with the firm.
(b) If available, enclose an organization chart which shows the allocation of management responsibility.

11. Describe and attach any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties relevant to the business entity affecting the ownership and control thereof.
12. Provide a statement attesting to the fact that there are no restrictions which prevent the affected group owners, without the cooperation or vote of a non-affected group owner, from making a business decision which favors the affected group owners.
13. Identify any employee-employer relationships continuing in this firm from previous firms which involved any of the owners listed in 8(h) as employees of this firm.
14. Enclose copy of current audited balance sheets and operating statements for the entity. (Waivers may be granted to firms who do not use outside auditors.)
15. Name of bonding company ____
Bonding limit ____ Source of letters of credit ____.
16. Identify trade references ____

17. Enclose evidence of authority to do business in the state as well as locally, including all necessary business licenses.
18. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or paticipation as an MBE and describe the circumstances. Enclose copies of any documents issuing or denying certification or participation.

"The undersigned does hereby swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of ____ Company as well as the ownership thereof. Further, the undersigned does covenant and agree to provide ____ through the prime contractor, current, complete and accurate information regarding actual work performed on the ____ project, the payment therefor and any proposed changes if any of the arrangements hereinabove stated and to permit the audit and examination of books, records and files of the ____. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon and initiating action under 18 U.S.C. 1001 and/or 49 CFR Part 23."

____
Signature

____
Name

____
Title

____
Date

Schedule B—Information for Determining Joint Venture Eligibility Under 49 CFR Part 23

1. Name of joint venture ____
2. Address of joint venture ____
3. Phone number of joint venture ____
4. Identify the firms which comprise the joint venture. (The MBE partner must complete Schedule A.). ____

(a) Describe the experience and busines qualifications of each joint venturer: ____

5. Nature of the joint venture's business ____

6. Provide a copy of the joint venture agreement.

Percentage MBE Ownership	Percentage Non-MBE Ownership

7. Ownership of joint venture
(a) Profit and lost sharing
(b) Capital contributions
(c) Other applicable ownership interests
8. Control of and participation in this contract
(a) Identify by name, race, sex and "firm", those individuals who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:
(1) Accounting ____
(i) How will accounting expenses be reimbursed? ____
(ii) Will a separate cost center, where in and out payments and accounting takes place, be established? ____
(2) Administration ____
(i) Supervisory on-site work ____
(ii) Operations ____
(3) Purchasing of material ____
(i) Indicate estimated cost of material ____
(ii) Indicate method of financing ____
(4) Budget ____
(5) Bonding and insurance negotiations ____

(6) Hiring and firing of management personnel ______

(7) Other ______

Include their titles, specific responsibilities and scope of authority, salaries, and expertise.

(b) Which joint venture partner will provide equipment?

(1) If owned, estimate cost and explain financing.

(2) If leased, identify lessor and terms of lease.

(c) Estimate contract cash flow for each joint venturer (on separate sheet).

(d) What will be the authority of each joint venturer to commit the other? ______

(f) What will be the specific portion of the work to be performed by each partner? ______

9. Enclose evidence of authority to do business in the state, as well as locally, to include all necessary business licenses.

10. Describe and attach any stock options or other ownership options that are outstanding, and any agreements between owners, between the two firms making up the joint venture, or between owners or joint venture firms and third parties relevant to the ownership and control of joint venture.

11. Provide a statement attesting to the fact that there are no restrictions which prevent the affected group owners, without the cooperation or vote of a non-affected group owner, from making a business decision which favors the affected group owners.

12. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as an MBE joint venture and describe the circumstances. Enclose copies of any documents issuing or denying certification or participation.

"The undersigned does hereby swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to ______ through the prime contractor, current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the arrangements hereinabove stated and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the ______. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon and initiating action under 18 U.S.C. 1001 and/or 49 CFR Part 23."

Signature

Name

Title

Date

[FR Doc. 79-15273 Filed 5-15-79; 8:45 am]

BILLING CODE 4910-62-M

federal register

Thursday
May 17, 1979

Part III

Department of Transportation

Federal Highway Administration

Highway Beautification Program Reassessment; Public Hearing Schedule and Procedures

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Parts 750 and 751]

[FHWA Docket No. 79-10, Notice 2]

Highway Beautification Program Reassessment; Public Hearing Schedule and Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public hearing schedule and procedures.

SUMMARY: The Federal Highway Administration (FHWA) announced in the Federal Register at 44 FR 25387, April 30, 1979, that it will hold a series of public hearings for the purpose of soliciting comments from all interested parties who may wish to express their ideas about the future direction of the Highway Beautification Program, and in particular, the outdoor advertising and junkyard control programs as set forth in 23 U.S.C. 131 and 136. The purpose of this Notice is to provide specific information concerning the hearing times and locations and the procedures by which the FHWA will conduct these hearings. Anyone desiring copies of the Federal Register announcement of April 30, 1979, may obtain them by telephoning the FHWA Office of Right-of-Way at (202) 245-0021 between 7:45 a.m. and 4:15 p.m., e.t., Monday through Friday, or by writing to the address listed below.

DATES: The hearings will be held during the months of June and July 1979 on the dates noted in the Supplementary Information Section of this Notice. All written comments must be submitted to FHWA Docket No. 79-10, Notice 2, at the address given below by July 15, 1979.

ADDRESS: Submit written comments, if possible in triplicate, to FHWA Docket No. 79-10, Notice 2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. Comments received will be available for inspection at this address between 7:45 a.m. and 4:15 p.m., e.t., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Moeller, Chief, Junkyard and Outdoor Advertising Branch, (202) 245-0021, or Mr. Edward Kussy, Deputy Assistant Chief Counsel for Right-of-Way and Environmental Law, (202) 426-0791. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: Eleven hearings have been scheduled to be held as part of the FHWA reassessment of the outdoor advertising and junkyard control provisions of the Highway Beautification Act of 1965, as amended. In the April 30 announcement of these hearings, the FHWA identified a series of questions concerning issues that it would like addressed in the comments given at the hearings or in written comments submitted to the docket. Anyone desiring copies of these questions may request them by telephoning the FHWA Office of Right-of-Way at (202) 245-0021 or any of the field offices of the FHWA which are located in most State capitals. The site addresses and hearing schedule are listed below in the section titled Hearing Times and Locations. The FHWA hearing officers will be Mr. Joseph M. O'Connor, Associate Administrator for Right-of-Way and Environment, Dr. David R. Levin, Director of the Office of Right-of-Way, and Mr. Gerald B. Saunders, Chief, Real Property Acquisition Division.

The procedures by which the FHWA will conduct the hearings are identified in the section titled Hearing Procedures.

1. *Hearing Times and Locations:*

City	Address	Beginning date	Hearing officer
Boston, Mass	John W. McCormack Post Office and Court House, Room 208, Post Office Square at Devonshire Street.	June 5, 1979	D. R. Levin.
Chicago, Ill	Chicago Marriott Hotel, 540 N. Michigan Avenue	June 5, 1979	J. M. O'Connor.
Portland, Oreg	Bonneville Power Admin., Auditorium, 1002 N.E. Holliday.	June 5, 1979	G. B. Saunders.
Baltimore, Md	Social Security Admin. Auditorium, 6401 Security Boulevard.	June 12, 1979	D. R. Levin.
Kansas City, Mo	Federal Bldg., Room 140, 601 E. 12th Street	June 12, 1979	G. B. Saunders.
San Francisco, Calif	Travelodge, Marina Rooms 1-2, 250 Beach Street	June 12, 1979	J. M. O'Connor.
Denver, Colo	Main Post Office Bldg., Room 269, 1823 Stout Street.	June 18, 1979	J. M. O'Connor.
Atlanta, Ga	Georgia Department of Transportation, Room 401, 2 Capitol Square.	June 19, 1979	D. R. Levin.
Dallas, Tex	Earl Cabell Federal Bldg., Room 7A23, 1100 Commerce Street.	June 19, 1979	G. B. Saunders.
New York City, N.Y	Two World Trade Center, Room 4430	June 26, 1979	D. R. Levin
Washington, D.C	Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW.	July 10, 1979	D. R. Levin.

All hearings will commence at 8:30 am., local time, except for New York City which will commence at 9:30 am., local time.

2. *Hearing Procedures.* The FHWA hearing officers will be guided to the greatest degree practicable by the following procedures:

a. Those persons wishing time to present oral comment must register to speak. Speakers will be heard in the order in which they register. Exceptions to this provision will be made for State Governors, United States Senators and Representatives, and the mayor of the host city.

b. It is anticipated that the number of persons desiring to present oral comment will be such that the hearing officer will limit the speaking time of each person to 10 minutes. However, more time will be apportioned to those desiring additional speaking time depending upon the number of individuals registering to speak. Speakers may not relinquish their speaking time to others. If a registered speaker is not present when it is his/her time to speak, the time is forfeited. In addition, there will be a 1-hour open remarks session wherein attendees will be recognized at random for the presentation of remarks. These remarks will be limited to 3 minutes per person.

c. Unless otherwise noted in the Hearing Times and Locations section above, all hearings will commence at 8:30 a.m., local time. Anyone desiring to give oral comment must register to speak between the hours of 8:30 a.m. and 2 p.m., local time, on the beginning day of the hearing. After speaker registration closes, an assessment of the time necessary for completing oral testimony will be made by the hearing officer and a schedule for completion of the hearing announced accordingly. The schedule will be dependent on the hours of availability of the hearing facility. Each hearing will last at least 1 day but no more than 3 days.

d. The following agenda will be followed on the beginning day of the hearing:

8:30 a.m.*—Begin speaker registration.
9 a.m.—Hearing officer presentation.
9:30 a.m.—Begin testimony.
12 noon—Adjourn for lunch.
1 p.m.—Hearing officer presentation.
1:15 p.m.—Continue testimony.
2 p.m.—End speaker registration.

*Except New York City, where the hearing will begin at 9:30 a.m., local time. Testimony in New York City will begin at 10:30 a.m., local time. All other times in New York City are the same as listed above.

3:45 p.m.—End testimony; begin open remarks.

4:45 p.m.—End open remarks; hearing officer closing statement.

5 p.m.—Adjourn.

Evening sessions may be held at the discretion of the hearing officer depending on the availability of the facility and in accordance with procedure No. 2c above. If a second (and third) day of testimony is required, testimony will commence at 9 a.m.

This notice of public hearing schedules and procedures is issued under the authority of 23 U.S.C. 131, 136, and 315 and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b).

Issued on: May 14, 1979.

Karl S. Bowers,

Federal Highway Administrator.

[FR Doc. 79-15427 Filed 5-16-79; 8:45 am]

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federal register

Thursday
May 17, 1979

Part IV

Department of Energy

Economic Regulatory Administration

Powerplant and Industrial Fuel Use Criteria for Petition for Exemption From Prohibitions

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-78-19E]

10 CFR Parts 502, 503, 505, and 507

Powerplant and Industrial Fuel Use Act of 1978; Criteria for Petition for Exemption From Prohibitions of the Act

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Interim rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this interim rule to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) which prohibit the use of petroleum and natural gas by certain electric powerplants and major fuel burning installation. These rules establish the criteria upon which owners and operators of powerplants and installations may petition for exemption from the prohibitions of the Act.

DATES: These interim rules shall become effective on May 8, 1979. ERA has decided to extend the period for written comments until August 15, 1979, before issuing its final rules on Parts 502, 503, 505 and 507. No additional public hearings will be held. However, before finalizing these rules, ERA will consider all written comments submitted during this extended comment period.

ADDRESSES: All comments should be addressed to Public Hearing Management, Docket No. ERA-R-78-19E, Department of Energy, Room 2312, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:
William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, (202) 634-2170.
Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 2130C, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-3987.
Robert L. Davies (Fuels Regulations—Program Office), Economic Regulatory Administration, Department of Energy, Room 6128I, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-3910.
James Heffernan (Office of General Counsel), Department of Energy, Room 7136, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633-8714.

SUPPLEMENTARY INFORMATION:

I. Background and Extended Comment Period

Parts 502, 503, and 505 of these interim rules set forth the criteria that must be met to establish eligibility for a temporary or permanent exemption under Title II of FUA. Part 507 defines "natural gas" and "petroleum" and establishes reporting requirements for certain fuels excluded from these definitions.

ERA published proposed rules for new and existing facilities on November 17, 1978 and January 29, 1979 (43 FR 53974 and 44 FR 5808, respectively). In the preambles to those proposed rules, ERA described the basic provisions of FUA and its proposed programs to implement them. ERA solicited comments on its proposals and held public hearings in Boston, Massachusetts on February 7, 1979; Salt Lake City, Utah on February 14, 1979; Tampa, Florida on February 21, 1979; and Lexington, Kentucky on March 2, and 3, 1979.

ERA received a large number of written comments and heard a variety of oral presentations at its hearings, all of which were incorporated into the record of the administrative proceedings on these rules. Based upon these comments and ERA analysis of the full record in these administrative proceedings to date, ERA has decided to issue this interim rule to establish the criteria for exemptions under FUA. ERA plans to publish interim rules for Parts 504 and 506 in the near future in order to provide the basis for full implementation of the regulatory programs required by FUA.

ERA has also decided to extend the period for submission of additional written comments on this interim rule. This extended period for additional written comments commences on the date this interim rule is issued and extends until August 15, 1979. ERA invites all interested persons to participate in these further proceedings by submitting any written information, views or arguments to Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. All submissions should be identified on the outside envelope and on the documents contained therein with the designation, "New Facility Regulations," Docket Number ERA-R-78-19E. You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room GS-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. We will consider all comments received by August 15, 1979, and incorporate these into the record of the administrative proceedings on Parts 502, 503, 505, and 507.

ERA will receive petitions for exemptions and make determinations in accordance with the procedures and definitions set forth in Section 500.2 and Part 501, issued concurrently with this rule. ERA's determinations on exemption petitions shall be made upon the basis of the standards and criteria set forth in Parts 502, 503, 505, and 507 of this Interim Rule, or upon the provisions of those Parts as subsequently revised where the application of a modification of a particular rule would result in a more favorable disposition of a particular petition. ERA urges you to file your petitions expeditiously so that ERA may render a timely decision on each petition.

ERA also conducted FUA-related rulemaking proceedings on transitional facilities, uses of natural gas, outdoor decorative lighting, and restrictions on the increased use of petroleum. On March 21, 1979, ERA published its Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities, 44 FR 17464, which established the criteria and procedures whereby ERA would make determinations as to whether a facility is subject to the provisions of Title II of FUA governing new facilities, or the provisions of Title III which governs existing facilities. On April 9, 1979, ERA published a final rule establishing an Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, 44 FR 1979, which established criteria and expedited procedures by which owners and operators of existing powerplants may petition for a temporary public interest exemption from the prohibitions against use of natural gas contained in Section 301(a) (2) and (3) of FUA. On May 7, 1979, ERA issued its final rule establishing prohibitions on The Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting, pursuant to Section 402 of FUA; and concurrently with this rule, ERA is issuing its Interim Rule establishing a Prohibition Against the Increased Use of Petroleum by Existing Electric Powerplants pursuant to Section 405 of FUA.

II. Comments

In the Preamble to the Proposed Rules published on November 17, 1978 and January 29, 1979, ERA specifically solicited comments on such issues as: the various exemptions, the Fuels Decision Report, the cost calculations, the substantially exceeds index, general requirements and terms and conditions for exemptions, competition, urban policy and the Fuel Classification and Reporting Requirements.

ERA received a number of written and oral comments on these issues as well as comments on many issues not specifically identified in the Preamble to the proposed rules. In order to facilitate an orderly discussion of these comments and ERA's specific responses to them, each will be discussed in the order that they appear in this interim rule.

Fuels Decision Report (Part 502)

Many comments were received criticizing the requirements imposed by the Fuels Decision Report as excessive, burdensome, unreasonable, confusing and costly. There were many specific comments which reflected the confusion experienced by the commentors concerning the kinds and quantities of information required for each chapter of the Fuels Decision Report. In addition, many commentors made the point that, for certain exemptions at least, the fuel search provisions of the Fuels Decision Report were inappropriate and, indeed, not required by law.

In response to all of these comments, ERA has significantly restructured the Fuels Decision Report. The Report is no longer organized in a technical, analytical format, e.g., engineering considerations, economic considerations, etc. It is now organized to reflect the eligibility and evidentiary requirements stipulated in the exemption regulations and the information needed by ERA to complete the exemption process. Its size and burden are totally dependent upon the exemption requested. The chapters no longer contain specific directions telling a petitioner specifically how he must make the required showings.

Submission of a Fuels Decision Report is not needed for those exemptions which by the Act or regulations primarily involve certifications rather than demonstrations of eligibility. These exemptions are: the peakload exemption for new powerplants; the emergency exemption; and the retirement exemption for existing units. Although petitioners for these exemptions do not have to submit a Fuels Decision Report, they do have to comply with the evidentiary requirements of the appropriate regulations and make the required showings in their petitions.

Most exemptions no longer require a fuel search and therefore do not require a broad-based Fuels Decision Report containing multiple exemption requests. Instead, the interim regulations require only that the Fuels Decision Report contain evidence that demonstrates eligibility for the exemption, compliance with appropriate general requirements, and information needed by ERA to develop terms and conditions if the exemption is granted and to comply with National Environmental Policy Act (NEPA) requirements.

The alternate fuel search is now required only for the following permanent exemptions: lack of alternate fuel for the first 10 years of useful life; lack of alternate fuel at a cost which does not substantially exceed the cost of using imported oil; site limitations; environmental requirements; lack of adequate capital; State or local requirements; intermediate load; and scheduled equipment outages of over 21 days.

The first five exemptions listed require, by law, a demonstration that, despite a good faith effort, legal, economic or technical constraints preclude use of an alternate fuel. The latter three exemptions are discretionary rather than mandatory, and given the nature of the exemptions, a fuel search is consistent with and furthers the purposes of the Act. The latter two, moreover, by law, contain an alternative site requirement which must be met for new powerplants. ERA believes that the presence of an alternative site requirement supports the requirement of a showing that the use of alternate fuels is, in fact, not feasible.

ERA estimates that these changes will reduce the total reporting burden on utilities and industry due to the Fuels Decision Report by well over half in the aggregate. The burden and cost experienced by a particular company will depend on the numbers and kinds of exemptions requested by that company. A request for a peakload or temporary exemption will result in a minimal burden for a petitioner. A request for a permanent cost exemption for a new powerplant necessitates much more information due to the legislative mandate that the general requirements—alternate supply of power, mixtures, and (when applicable) fluidized bed—be met, as well a fuel search undertaken, alternative sites examined and, ultimately, multiple exemptions requested. However, even in this case, the burden has been pared down to the level contained in the legislation.

Some comments questioned the legal authority of ERA to require submission of a Fuels Decision Report. ERA may, under Section 701(c) of FUA, stipulate the form and format of requests for exemption. In addition, ERA has significant information-gathering authority under Section 711(a) of the FUA and Sections 5 and 13(b) of the Federal Energy Administration Act of 1974 (FEA Act). The FUA provisions themselves provide ample legal basis for the requirement that information to be used in establishing terms and conditions include oil and gas consumption and conservation measures, and that environmental information be provided for use by ERA in complying with NEPA requirements.

ERA received a number of comments suggesting that ERA should stipulate the alternate fuels which must be considered by a petitioner in his Fuels Decision Report. Some commentors merely stated that ERA should define the fuels which should be examined; others stipulated what the fuels are that ERA should require to be examined, with coal, petroleum coke, coal derivatives and coal oil mixtures being those fuels mentioned most frequently. The point was made by several commentors that ERA should limit consideration of alternate fuels to those fuels which are commercially available, technically practical, in general use with industrial acceptance, economic, available in sufficient quantity to satisfy the petitioner's requirements, and must take into account other specific parameters to which a facility is subject. ERA recognizes the potential merit of such proposals, although we are not yet in a position to implement them.

The range of these comments reinforces ERA's decision to allow the petitioner to select those alternate fuels which are reasonable for his needs and supply opportunities in those cases where a fuel search is required. It is up to the petitioner to describe his particular situation and to examine those fuels which best meet his needs. Those fuels are likely to differ significantly among petitioners. Although it may be that all petitioners should examine the use of coal, land-fill methane may not be a reasonable option for a petitioner located at a significant distance from a dump or a land fill. Solar may be a more reasonable alternative for a petitioner located in the sunbelt than for one located in some other area. The use of wood chips, black liquor, or wood waste is often a reasonable option for paper mills and lumber mills, but may not be for a steel mill.

ERA has made provision for pre-petition conferences to scope out the number and kinds of alternate fuels which must be examined by a petitioner when a fuel search is required. This stage of the process is particularly important since ERA intends to undertake a serious review of the petitioner's choice of alternate fuels. ERA does retain the right to request more information, not accept a petition, or deny an exemption on the grounds that a petitioner for one of the exemptions requiring a fuel search failed to demonstrate adequately that he could not use a particular alternate fuel.

ERA does recognize the problems faced by petitioners in attempting to determine what fuels to examine when ERA has provided no guidance. ERA is considering developing and proposing regulations which provide a process to address this question. These regulations could provide a mechanism by which ERA, in concert with DOE's Offices of Energy Technology and Resource Applications would solicit public comment and information from industry on the feasibility and commercial acceptability of alternate fuels and innovative technologies. This process would result in publication by ERA of a presumptive matrix of alternate fuels and technologies which could be amended on an annual or as-needed basis. It is expected that the matrix would identify various alternate fuels and identify their feasibility on such bases as industry, geographic location, unit size, unit type, and other criteria. That proposed regulation will also explain the procedure ERA will use to update the matrix.

Once such a matrix is established and published, ERA would expect petitioners who must conduct a fuel search to examine, at a minimum, those alternate fuels which are included in that part of the matrix which applies to them. ERA also would reserve the right to amend the fuels list contained in the matrix at the pre-petition conference. We solicit comments on the types of proceedings we should establish to initiate this process, on the kinds of criteria which should be used, on the level of specificity and detail that the matrix should include, and on the benefits or problems associated with the matrix concept.

A substantial number of comments was received criticizing the certification requirements proposed in the November 17, 1978, Federal Register notice. Few comments were received supporting the provisions. Essentially, § 502.2(e) required that the Chief Executive Officer certify as to the accuracy and professional integrity of the Fuels Decision Report and that the petitioner append to the certification a description of how the national policies concerning the use of alternate fuels were explained to corporate personnel, a description of the process by which a petitioner has in the past made his fuels decisions, and a description of the process by which the petitioner made the decision to seek an exemption. The certification provisions as a whole were criticized as being excessive and unnecessary, an intrusion into the management of private corporations, an attempt to dictate company management and the way corporate decisions are made, irrelevant to the regulatory proceedings, and an attempt to discourage exemption petitions.

In view of the comments, ERA has changed the regulations substantially. The requirement that the Chief Executive Officer (or any corporate official) certify to the accuracy of the Report has been removed. Moreover, only the duly authorized representative of the petitioner is required to sign any certification, not the Chief Executive Officer. The requirement that the certification include a description of how national fuel policies were explained to staff and the description of the company's historic fuels decision process has been deleted. The language requiring a description of the process by which a decision to request an exemption was reached has been modified substantially.

ERA received comments criticizing the requirement that professionals who prepare the Fuels Decision Report be required to certify. It was contended that this requirement was excessive and superfluous since these professionals could be required to testify under oath. ERA has modified the requirement. Instead of requiring that each professional certify, the regulation merely requires that the petitioner certify that significant contributors to the Report have been informed that they may be subject to questioning under oath in a public hearing. Principal contributors to the Report must by listed and their disciplines identified.

Several commentors suggested that the information required in the Introduction pertaining to utility supply and demand forecasts was duplicative of information required by other regulatory bodies. ERA concurs and has deleted the requirement.

Several commentors suggested that the waiver provision in the pre-petition conference be expanded and made more specific. ERA does not believe that increased specificity would be useful. Any waiver is a discretionary action on ERA's part which will turn heavily upon the particular situation at hand. ERA believes that by restructuring the Fuels Decision Report, the need for most waivers has been eliminated. ERA expects the pre-petition conferences to focus on the fuels to be examined if a fuel search is required and on other matters as to which it can be concluded, even at the pre-petition conference stage, that substantial effort or analysis by the applicant would not be warranted. Efforts to obtain State Implementation Plan revisions, for example, may in some circumstances be predictably fruitless. As experience is obtained, it may further be possible to specify the provisions bearing upon pre-petition conferences. ERA will carefully consider proposals to do so.

Some commentors suggested that ERA prepare and publish a sample Fuels Decision Report. Since each Report will be unique to a case, ERA believes that publication of a sample Report would confuse rather than clarify the requirement. Once petitions for exemption are accepted, summaries will be published in the Federal Register and the petition, including the Fuels Decision Report, will be made available to the public. The precedents will provide the best guidance on what ERA will consider acceptable.

Several commentors criticized the requirement that the appendices include any studies and memoranda relating to fuel choice decisions prepared during the past 5 years as unreasonable and irrelevant to the exemption decision. ERA concurs and has deleted that language. However, ERA does strongly recommend that a petitioner append any documentation which supports his exemption request and which will assist the decision process.

Several commentors suggested that the Fuels Decision Report should be prepared on a site or company basis rather than a unit-by-unit basis. Yet, the FUA, with the exception of the System Compliance Option, clearly provides for prohibitions and exemptions on a unit-by-unit basis. As a result, exemptions must be requested on a unit basis and therefore these interim rules contemplate Fuels Decision Reports prepared on a unit basis. If, however, a petitioner is requesting exemptions for two or more units which operate in combination at the same site, a petitioner may submit only one Fuels Decision Report as long as the exemptions requested and the units to which they pertain are clearly distinguished in the Report. Moreover, ERA recognizes that it may be advantageous for both companies and ERA to consider long range, comprehensive fuels decision planning. ERA therefore encourages the preparation and submission in close conjunction with each other of interrelated exemption requests. It will probably also be possible to incorporate by reference in subsequent Fuels Decision Reports portions of an initial Report that involved a unit at the same site as the units contemplated in the subsequent Reports. ERA is prepared to explore the potential for all such techniques in pre-petition conferences.

Several commentors stated that the information requested in the Petroleum and Natural Gas Consumption chapter of the Fuels Decision Report is not relevant to decisions on exemptions. ERA has clarified in the regulations that the purpose of such information is not to determine eligibility for exemptions but to serve other purposes of the Act.

Some commentors objected to the magnitude of the requirement that utilities must provide supply and consumption data for its electrical region in the Petroleum and Natural Gas Consumption chapter of the Report. ERA agrees and has deleted that requirement.

Some companies stated that the requirement in the Petroleum and Natural Gas Consumption chapter for fuel use projections up to 1990 is unrealistic since many companies employ only a 5-year planning program or less. ERA believes that a planning horizon of 10 years—to about 1990—is not unreasonable within the context of the Act. Several temporary exemptions are allowed for 10 years, including extensions. The focus of the Act is on the long-term turnover of the nation's stock of powerplants and installations. The statutory prohibitions against the use of natural gas by existing powerplants take effect in 1990. In sum, the Act essentially requires a 10-year planning horizon and this chapter adheres to that policy.

Several commentors stated that the information requested in the Conservation chapter is irrelevant to the exemption decision process. The purpose of the chapter is to provide ERA with information that can be used in formulating terms and conditions which may be imposed if an exemption is granted. Other commentors challenged the scope of the chapter, stated that an excessive amount of information was requested, and stated further that the chapter contravened the National Energy Conservation Policy Act (NECPA). ERA disagrees. The chapter requires that the petitioner describe what conservation measures he has taken and intends to take for the unit and the site. It also requests the petitioner to describe his conservation goals. Such a requirement represents adherence to the purposes of both the FUA and the NECPA. FUA authorizes ERA to limit oil and gas use if reasonable conservation conditions are not satisfied. ERA will exercise such authority both in setting terms and conditions and in determining whether a powerplant applicant for certain exemptions has shown, pursuant to the regulations issued under Section 213(c) of the Act, that there is no alternative supply of power available. Such conditions under FUA do not require conservation in general; rather, they are preconditions to the use of oil or gas under a statute designed to conserve those fuels.

Some confusion was evidenced by commentors concerning the Environmental Impacts Analysis chapter. The purpose of the chapter is to assist ERA in complying with the NEPA. The FUA states that only temporary exemptions and certain permanent exemptions for existing facilities are exempt from compliance with NEPA. All other exemptions are subject to NEPA requirements. Compliance with NEPA does not necessarily mean that an environmental impact statement is required before an exemption may be granted or denied. It does mean, however, that sufficient environmental information is required to determine whether a finding of no significant impact, an environmental analysis (EA), or an environmental impact statement (EIS) is required before an exemption is granted or denied. ERA expects that the amount of environmental analysis required to be included in a Fuels Decision Report will vary on a case-by-case basis and will be a topic of discussion at pre-petition conferences.

ERA will use data supplied in this chapter to determine not only what level of environmental analysis is needed prior to granting or denying an exemption but also as a base in order to expedite preparation of EA's and EIS's, where needed.

ERA does not intend that this chapter be duplicative of other information supplied by the applicant and has suggested that such information be incorporated by reference. In addition, in our proposed guidelines for Environmental Reports published in the Federal Register on January 31, 1979 (44 FR 6177) we requested information on present or future EIS's by other agencies which would adequately reflect impacts under FUA.

The kinds of information required in the Environmental Impacts Analysis chapter reflects the requirements of the proposed guidelines. The comments received on those guidelines have not yet been reviewed, nor have the proposed guidelines yet been revised. As a result, the kinds of information required in the Environmental Impacts Analysis chapter may be revised in the future to reflect ERA's response to comments on the proposed guidelines and associated issues.

Substantially Exceeds Index (§§ 503.5 and 505.5)

In the regulation originally proposed by ERA governing the cost calculations required of a petitioner for an exemption under Sections 211(a), 212(a), 311(a) and 312(a) of the Act, ERA proposed a range of 1.3 to 1.8 times the cost of using imported petroleum. ERA has received numerous comments on this proposed range which suggest that it (including the example used by ERA of 1.5) may be excessive and not in accordance with the statutory standard of what is appropriate for an index reflecting a cost which does not "substantially exceed" the cost of using imported petroleum.

The comments state that a study done by the Department's Energy Information Administration (EIA) indicates any ratio above 1.1 to 1 will generate little or no incremental benefit to the nation.[1] The commentors also contend that the index is inflexible in nature and violates current Federal price policy with respect to announced wage and price guidelines. Some comments stated that other Federal agencies and the courts have stated that an increase in costs of 5 to 10 percent is substantial in cases involving other Federal statutes and regulations.

Statutory Purposes

With regard to the actions of other agencies under other statutes, ERA believes that the substantially exceeds cost test index must be set at a level that will carry out the purposes of this Act without imposing costs on the American public as a result of using coal or another alternate fuel that greatly exceed the benefits obtained under the Act. In this regard, it is important to look at the purposes of the Act as set forth by the Congress in Section 102.

[1] "Analysis of Proposed DOE Regulations Implementing the Powerplant and Industrial Fuel Use Act" AM/EI/79-07. This memorandum can be obtained from: Energy Information Administration Clearinghouse, 1782 M Street, N.W., Room 210, Washington, D.C. 20461, (202) 634-5641.

These purposes include a reduction in the importation of petroleum and an increase in the nation's capability to use indigenous alternate energy resources to move toward a goal of national energy self-sufficiency. Other purposes include the conservation of natural gas and petroleum for uses other than electric or other industrial or commercial generation, the encouragement of the use of coal and other alternate fuels as primary energy sources, the conservation of our nation's supplies of natural gas and petroleum for the benefit of present and future generations and a reduction in the vulnerability of the United States to energy supply interruptions. It is incumbent upon ERA to set an appropriate substantially exceeds cost index in light of these purposes in this statute.

With regard to comments that the Department's own analysis clearly indicates that a ratio greater than 1.1 to 1 would be of little benefit to the nation in reducing oil and natural gas use, it must be pointed out that this study examined only the cost of using coal versus the cost of using imported petroleum; it did not address, nor claim to address, the economic and national security benefits to the Nation obtained through the implementation of FUA. Within this scope, while the EIA analysis did show that little or no oil and gas savings were forthcoming from the utility sector at index levels higher than 1.1, it also showed that significant savings were obtained from the industrial sector at much higher index values.

Other commentors stated that whether a powerplant or installation is able to meet the cost test should not be the sole criterion and that a facility should still receive an exemption to use oil or natural gas if (a) in the case of an MFBI, the cost to build such facility makes it unable competitively to produce its product at its present or projected site or, (b) in the case of a powerplant, the cost of such facility causes an "unreasonable" increase in the utilities rate base, thereby "substantially increasing" utility rates to consumer.

The test mandated by the Fuel Use Act is whether the cost of using an alternate fuel substantially exceeds the cost of using imported oil. The statute defines cost to include capital, operating and maintenance, and delivered fuel expenses discounted to the present. The test employed by ERA in Sections 503.5 and 505.5 of these regulations is a ratio of these cost elements discounted to the present. We do not believe that effects on competition can appropriately be substituted for the cost elements mandated by the statute, nor do we believe that an examination of such impacts could appropriately be used, or would of itself generate a proper measure under the Act of when the excess of costs is "substantial." As experience is gained under the Act, we will be better able to assess the pattern of impacts on utility rates of the cost index. We are not prepared presently to adopt a separate index designed for special categories of utilities.

Other commentors have pointed out that the analysis done by the Regulatory Analysis Review Group (RARG) in assessing the cost of compliance with the Act, also supports a lower index than the range of 1.3 to 1.8 in the proposed rules.[2]

ERA believes that the basic approach utilized in the RARG study was illuminating. We do not believe, however, that the study adequately accounted for the benefits of increased coal use in all respects, nor did it fully address the issue of future differences in the prices of oil and coal. ERA had fully reviewed the RARG study and finds the analysis conducted by DOE and described below to be generally consistent with RARG analysis with several significant exceptions.

Gas/Oil Displacement Ratio [3]

A particularly important difference is that the RARG analysis assumed that displacing a combination of natural gas and oil through implementation of FUA would result in a .69 to 1 displacement of imported oil—a major beneficial effect of the program. That is, RARG assumed that displacing of 100 BTU's of natural gas under the Act reduces oil imports by only 69 BTU's. The actual displacement ratio is extremely difficult to estimate with confidence. While we realize that from a purely analytic perspective the oil import displacement ratio for natural gas in particular may be less than 1 to 1, we believe it would be inappropriate to use a smaller displacement ratio in arriving at the "substantially exceeds" index under FUA for the following reasons.

A displacement ratio substantially lower than 1 to 1 is highly dependent on ample gas supplies over the 30 to 40 year planning period for this program. Where supplies are ample, displaced gas will remain in the ground rather than displace imported oil. We do not believe that it is appropriate to assume ample gas supplies when making policy judgments under FUA, an Act premised on a strong need to preserve natural gas because supplies are not ample.

Moreover, the Act and the legislative history give no indication that the Congress intended to value reductions in gas consumption less than direct reductions in oil use. Indeed, the Act is more restrictive of natural gas use than it is of petroleum use. We believe that a lower substantially exceeds index for natural gas than for oil would be inappropriate as a matter of policy and questionable as a matter of law under FUA. If there is to be a single index for both oil and gas, it would be highly inconsistent to determine that index using a critical assumption (the displacement ratio) that values gas less than oil.

Thus, while DOE recognizes and will continue to analyze this issue we do not at present find any basis for either setting a separate index applicable to the proposed use of natural gas, or lowering the index overall to account for a less than 1 to 1 displacement ratio. To do so, in ERA's view, would probably not be in accordance with the Act and would be an inappropriate valuation of this vital energy resource.

Primary Factors for Consideration

ERA believes it is essential in setting the index to take into consideration six primary factors: (1) The effect of an increased use of coal[4] in reducing the world price of oil and the consumption by the United States of imported oil; (2) the effect of an increased use of coal on United States balance of payments and the domestic rate of inflation; (3) the effect of an increased use of coal on our national security; (4) the impact of projected future increases in the price of imported petroleum relative to projected future increases in the price of domestic coal; (5) the impact of the implementation of the Act on accelerating the use and development of alternate fuels and alternate fuel technologies, and (6) the effect of an increase in the use of coal (in compliance with applicable

[2] RARG is a permanent regulatory review group composed of representatives of several agencies located within the Executive Office of the President. It was established to monitor the performance of regulatory agencies under the provisions of Executive Order No. 12044, "Improving Government Regulations."

[3] Note—The paragraph under this subheading has been replaced by an amendment to this preamble published elsewhere in this Part. (See FR Doc. 79-15838)

[4] ERA expects the Act to accelerate the use of other alternate fuels besides coal. At this time we cannot quantify these benefits, but increased use of alternate fuels would clearly reduce oil imports, in particular displacing oil where direct burning of coal is environmentally limited. These reductions in oil imports would have an effect on reducing world oil prices and national security. Since we cannot quantify these impacts at this time, the benefits analysis, above, understates the true benefits of the Act.

environmental requirements) on the nation's air quality.

Oil Import Reduction Premium

ERA believes that one of the essential ingredients of the Act is the reduction in petroleum imports through an increase in the use of indigenous coal and other alternate fuels. Therefore, a primary component of the substantially exceeds cost index ratio should be the premium attributed to a reduction in oil imported as a consequence of an increase in the use of these domestic energy resources. A significant benefit resulting from such a reduction in the U.S. demand for imported oil is the anticipated reduction in world oil prices, or what is more likely, the reduction in the rate of increase in world oil prices. Any reduction in the world oil price path will benefit the U.S. (and other consuming nations as well) in that all crude oil may be obtained at lower prices. Thus, the economic costs that are saved by importing less oil are measured not solely by the price per barrel at which the saved imports would have been imported, but as well by the resultant reduction in the price of the barrels that are imported. [5]

ERA has relied upon various models in determining the premium attributed to the effect of oil import reductions resulting from the implementation of FUA on the world oil price. These models, which are in the record of this rulemaking included: (1) the Oil Market Simulation Model developed by the Energy Information Administration of DOE documentation in Appendix B of EIA Analysis Memorandum AM 11IA-7805); (2) the World Oil Market Model developed by the Office of Policy Analysis in DOE (documentation available from the Office of Policy and Evaluation upon request); and (3) Profit Maximization World Oil Model developed for the Office of Policy Analysis by ICF, Inc. (documentation available from the Office of Policy and Evaluation upon request). Various estimates of the effect of import reductions on the world oil price, and hence the benefit per barrel of these reductions, were derived using all of these models. These benefit estimates were found to be sensitive to the wide range of assumptions regarding OPEC pricing behaviors in the face of reduced demand which are contained in each model and ranged from $.73 to $4.55 (1978 dollars). ERA has calculated a premium of $2.25 as the appropriate estimate of the benefit per barrel of reduced oil demand. The $2.25 estimate was selected after a careful examination of the assumptions underlying each of the models, especially those regarding the basic objectives of OPEC pricing decisions. The Profit Maximization Model, for example, assumes the central objective underlying these pricing and production decisions is "wealth maximization", which results in a premium for reducing oil imports which is substantially smaller than $2.25. Conversely, the World Oil Market Model utilizes systems dynamics techniques and yields estimates which are much closer to the $2.25 premium chosen and are sensitive to the level of OPEC production. The estimates of the import premium fall to the extent it is assumed that OPEC chooses gradually to expand production. The Oil Market Simulation Model yields the highest estimates up to $4.55 of the import reduction premium in cases assuming high future demand for oil.

However, these estimates are sensitive to the rate of growth in demand by the consuming countries, including the U.S. In cases of low or moderate demand for oil, the OMS model estimates no effect on the world oil price until after 1985.

ERA chose the $2.25 premium after reviewing these models, the importance of key variables in determining the estimate, and the general validity of the basic assumptions underlying each modeling approach. ERA's decision rested on the following conclusions: (1) the basic objective in attempting to estimate the effect of FUA import reductions on the world oil price is important in the context of this rulemaking; (2) each of the basic assumptions underlying these estimates was sufficiently valid to deserve consideration; and (3) no single set of assumptions was found to be superior in all respects to the competing approaches.

The $2.25 value is based on the view that no single source of estimates should be disproportionately relied on for the purposes of determining this component of the import reduction premium. Accordingly, ERA assigned equal weight to the results of each of the three models. ERA believes this to be a reasonable approach in light of the divergence in the estimates, the projected pricing behavior of the OPEC cartel, and the level of demand by the oil consuming nations. Selecting a substantially higher or lower figure would have placed undue reliance on only one of several legitimate projections of the future behavior on the part of both producing and consuming nations.[6]

National Security Benefits

ERA also utilized an estimate of the benefit to the U.S. from the increased national security resulting from oil import reductions under the program. The RARG analysis did not include an estimate of national security benefits. We believe such an estimate to be essential, given that one of the primary purposes of the Act is to reduce the vulnerability of the U.S. to energy supply interruptions in the interests of national security. It must be kept in mind, in this regard, that since the oil emergency of 1973 there have been disclocations in the supply of imported oil, as recently evidenced by the current substantial interruption due to the Iranian situation.

While there are several possible methods of assessing the premium to be attributed to this factor, ERA believes that the most workable measure we have at the present time by which to assess the cost of achieving this goal is the cost of establishing and maintaining the Strategic Petroleum Reserve.[7] The Reserve is one of our prime strategic defenses against a supply interruption in imported oil. ERA has evaluated the cost figures applicable to the strategic petroleum reserve as part of setting an appropriate substantially exceeds cost ratio. This calculation results in a premium of $.40 per barrel reduction in oil demand attributable to this factor. This amount reflects the savings attributable to the potential reduction in the required size of U.S. strategic petroleum reserve resulting from the oil import reductions under the Act.

Balance of Payments Benefits

ERA also included in its analysis of the benefits of import reductions under the Act an estimate of the beneficial effect on the U.S. balance of payments, the strength of the dollar on international currency markets, and the rate of inflation in the U.S. To the extent that we reduce our reliance upon imported oil, we alleviate the U.S. balance of payments problem and strengthen the value of the dollar. This reduces the price of U.S. imports purchased with dollars and has a

[5] For a particularly useful recent presentation of this point, see Thomas C. Schelling, *Thinking Through the Energy Problem*, 29-30 (Committee for Economic Development 1979).

[6] Cf. Schelling, at 29: "There is no reliable way to calculate the effect of changes in world import demand on the price that will be set or obtained by OPEC countries. It is almost certain, however, that reduced demand for imports will soften prices or slow their climb, while increased demand would hold prices up or accelerate their climb . . ."

[7] The Strategic Petroleum Reserve was established pursuant to Section 151 et seq. of the Energy Policy and Conservation Act of 1975.

corresponding downward pressure on the U.S. inflation rate.

These estimates rely upon calculations done by the Council of Economic Advisors showing the costs of using monetary and fiscal policy to produce a similar reduction in the rate of inflation and include the offsetting effects on U.S. exports of an increase in the purchasing power of the dollar abroad. ERA has used a premium of $.30 per barrel reduction in oil imports applicable to this factor, after reviewing the RARG report which addressed this benefit and consulting with the staff of the Council of Economic Advisors on the assumptions and issues raised by this aspect of the analysis.

Legal Emissions Under the Clean Air Act

The RARG analysis argued that ERA should account for the cost of the additional legal emissions resulting from the increased use of coal in place of oil and natural gas. We agree with this view and have reduced the benefits per barrel premium by $.93 per barrel reduction in oil demand to account for additional costs to the Nation of using coal fuels in place of oil or natural gas.

The RARG study suggested that a figure of $.20 per million BTU's or $1.24 per barrel should be used. ERA reduced this number to $.15 per million BTU's or $.93 per barrel because, in ERA's view, the RARG estimate failed to account for a number of important factors. First, the costs of using available clean air increments for newer productive facilities when fired with coal rather than oil or gas will not occur immediately. Hence these costs should be discounted over time in order to arrive at their present value. This discounting-to-present-value-approach parallels the calculation of benefits estimates used both by RARG and by ERA.

Second, the compliance cost figures used in the RARG report to calculate the costs of incremental legal emissions did not account for the full range of means whereby emissions in a particular airshed might be reduced in response to these incremental emissions. Normal plant closures, offsets purchases and production process changes may in various instances provide means for reducing emissions at lower costs than those cited in the RARG report. The RARG analysis did not discuss these offsetting considerations. Thus, ERA concluded that $.93 represented a more appropriate estimate of these costs.

It should be noted that in computing whether or not a facility meets the test of the substantially exceeds cost index, the cost of environmental compliance for each fuel considered is taken fully into account. Thus, the difference in compliance costs is accounted for in making the cost test comparison; the $.93 represents the social cost of legal emissions.

Enhancement of Alternate Fuels Technologies

ERA believes that one of the primary benefits in implementing the Act is the acceleration in the use of alternate fuels and alternate fuel technologies accomplished through the application of the cost premium on the petroleum or natural gas use. While we have been unable to quantify this benefit, we believe it is an important consideration in assessing the validity of the substantially exceeds index.

Petroleum and Coal Price Trajectories

ERA also believes that the cost index should account for anticipated increases in oil prices relative to coal prices. (RARG assumed a constant relationship of oil and coal prices.) For ease of administration, ERA has determined that petitioners for exemptions under the Act should assume in the calculations under the cost test that current fuel prices will remain constant in real terms. ERA has added a separate factor of about three dollars to the cost index which raises it by an amount just sufficient to offset the use of an unrealistic constant oil-coal price gap in the cost test. This factor was based on the projected rate of increase in the difference between oil and coal prices. Based on past projections of the path of world oil prices which have proven to be too low when compared to actual world price changes, we believe a 2–3 percent increase to be reasonable for the purposes of accounting for the anticipated increase in oil prices relative to those of coal.

We realize that there are many models which are being developed to project the rate of increase in both coal and world oil prices and the effect of such increase on the rate of industrial and utility conversions to coal. However, such models can only take into account a limited number of factors which cannot be predicted with precision and assume that industry and utilities will in fact make investment decisions based on such assumptions.

ERA proposed a range of 1.3–1.8 in its proposed regulations. For the purposes of these revised interim regulations, ERA has selected the low end of that range and will employ 1.3 for purposes of evaluation of petitions for exemption submitted after the effective date of FUA. ERA has arrived at 1.3 after careful and detailed consideration of all relevant public comments, both oral and written, consideration of various analyses performed by the Office of Policy and Analysis and the Energy Information Administration, as well as the Regulatory Analysis Review Group, and after consideration from a policy perspective of the proper scope of the statutory term "substantially exceeds" when set in the context of the comprehensive purpose clauses of FUA contained in Section 102. ERA invites additional written public comment in regard to the 1.3 index and these pertinent considerations.

During the pendency of the additional public comment period which ERA is providing in regard to these interim rules, we will continue to review all additional public comments as well as the continuing analyses of these issues which will be ongoing by the Office of Policy and Analysis, the Energy Information Administration, and the Regulatory Analysis Review Group.

Summary

In summary, ERA finds that the appropriate premium for reducing oil imports is $2.95 consisting of $2.25 due to the effect on world oil prices, $.40 due to increased national security, and $.30 due to the effect on the U.S. balance of payments and inflation rate. This basic premium was then reduced by $.93 to account for the increased costs of additional legal emissions. Finally, three dollars was added to account for the projected increase in gap between oil and coal prices. This produced a premium for reducing oil demand through the Act of about five dollars per barrel. (The analyses underlying the major components of the premium is contained in the report, "A Method for Estimating the Premium for Reducing U.S. Oil Imports." Copies are part of the record of this rulemaking proceeding and are available from the Office of Policy Analysis upon request.)

ERA then determined the ratio of the cost of using coal to the cost of using imported oil that was equivalent to this per barrel premium. Equivalence in this case means that it would result in the same number of conversions as the per barrel premium would, if this were added to the price of each barrel of oil consumed in the projected facility and the ratio were set at 1.0. Specifically, ERA used the Coal Utilization Model for the Industrial Sector (CUMIS) Environmental Analysis, Inc., for the Department of Energy to match the per barrel premium of about $5.00 with its equivalent ratio. This analysis indicates that when petitioners submit comparative cost projections based on current prices remaining constant in real terms, a ratio of 1.3 produced the same projected number of conversions as the per barrel premium of five dollars.

Thus, ERA determined that the substantially exceeds index should be set initially at 1.3. This ratio incorporates the benefits premium noted earlier and is designed to ensure that the cost index is set so that the additional costs of using alternate fuels do not exceed the benefits to the Nation from reducing our consumption of oil and natural gas. This ratio will be revised from time to time to reflect significant changes in the consumptions and factors used by ERA in formulating the ratio. ERA believes this ratio is reasonable and in full accord with the purposes of the Act as set forth by the Congress.

Various of the models and analyses used in arriving at the substantially exceeds index have not previously been available for public comment. Public comment on these studies is invited for the period of comment allowed on these Interim Final Rules.

Cost Calculations (§§ 503.5 and 505.5)

Section 212 of the Act provides that ERA must grant an exemption from the prohibitions of the Act when alternate fuel supplies are available only at a cost which substantially exceeds the cost of using imported petroleum. After evaluation of the comments received during the public comment period, ERA is now proposing interim rules which provide the criteria, methodology and evidentiary requirements to be used by a petitioner in petitioning for an exemption based upon the cost of building and operating a facility to burn an alternate fuel. In all cases, we have determined that the appropriate cost comparison must take into consideration the capital, operation, maintenance and fuel costs associated with specific fuel choices, and they must be expressed in real terms [6] discounted to present value. The following sections address specific aspects of the cost calculation and include a discussion of certain modifications which are now being adopted by ERA in these interim rules in response to the comments received on the proposed regulations.

a. *Alternative cost comparison methodologies.* We propose to use a ratio index in making cost comparisons to reflect the difference between the cost of using imported petroleum and the cost of using an alternate fuel. In preparing your petition for exemption, you must construct a ratio comparing the present value of the cost of using an alternate fuel to the present value of the cost of using imported petroleum in your facility. If the cost ratio you obtain is higher than the ratio (index) designated by ERA in its rules, you will have demonstrated to ERA that the cost of using alternate fuels substantially exceeds the cost of using imported petroleum, and we will grant the exemption you requested. If, however, the ratio obtained is equal to or less than the index, you will be denied the exemption. Sections 503.5 and 505.5 of the interim rules describe this methodology in detail.

Some of the comments we received on the proposed methodology suggested that the net present value method and the incremental oil cost methodology were preferable to the cost comparison test we proposed. The net present value method consists of computing the differences between two discounted cash flows which are associated with two alternatives. The sign of difference—positive or negative—determines the alternative selected and, when used in private investment decisions, if the difference is zero, it does not matter which alternative is chosen. The incremental oil cost methodology is a variant of the net present value method in which the price of oil is adjusted upward by an increment which reflects the social value of using the oil. Again, the sign of the difference between the discounted cash flows determines the decision.

We rejected the pure net present value method because it operates purely from the private investor's perspective and therefore ignores the social cost of using oil which is embodied in the substantially exceeds index.

We rejected the incremental oil cost methodology because (1) it is not clearly superior to the ratio test, and (2) we believe the ratio test is more intuitively appropriate for the purpose for which the index is to be used. Moreover, as will be seen below, we calculated an incremental oil cost in arriving at a substantially exceeds index. The advantages of that method in identifying and quantifying the costs and benefits of displacing oil and gas are therefore not lost in the method which we have chosen.

Other comments suggested that the comparison take into account the petroleum that could be saved or the amount of revenue created by the investment. We considered these comments and concluded that (1) the setting of the substantially exceeds index adequately considers the benefits of the petroleum that could be saved, and (2) while the Act requires ERA to account for costs—e.g., total operating and capital—it does not require us, and we do not believe that it would be appropriate for us, to account for revenue.

In our opinion, the cost comparison methodology that we have chosen meets all the requirements of FUA and is for the purposes of the Act, equal to or better than the methodologies that were discussed in the comments. However, we still welcome comments on this methodology.

b. *Perceived Bias.* Comments received on the proposed regulations suggest that the cost test, as proposed, contains biases against the use of petroleum—high annual capacity factor, low discount rate—and that its employment could result in noneconomical decisions to use coal or other alternate fuels.

We believe that the definitions and values of the various elements of the formulas are fair and reasonable; their elements are discussed below.

c. *Specification of discount rates.* The cost calculation procedures as proposed in § 503.3 and § 505.5 require the use of real (uninflated) discount rates. In the proposed regulations, we had tentatively set discount rates for new powerplants at 3.5 percent per annum and estimated the discount rate for new installations at 7 percent per annum. The comments suggested that the discount rates, as proposed for use in the calculations, were too low. Some commentors also recommended that the discount rate provide for industry and firm-specific factors—two of which are risk and the return available from alternate investments. It was further noted in the comments that the 7 percent discount rate proposed for installations is inconsistent with a June 1977 Federal Energy Administration objective permitting a 20 percent return of investment.

We have chosen not to use firm-specific discount rates as some commentors have suggested because it would involve additional administrative complexity that we do not believe, given the purpose of FUA, is justified.

A firm- or company-specific discount rate, all else being equal, would increase the likelihood of the least efficient firms receiving an exemption on the basis of cost and reduce the likelihood of the more efficient firms obtaining an exemption on the basis of cost. ERA does not believe that, under an act designed to conserve petroleum and natural gas and to ensure they are available for their highest and best uses,

[6] "Real terms" means with the effects of inflation removed. Prices are expressed in the dollars of a specific year (e.g., 1979 dollars).

the opportunity to burn such fuels should vary inversely with firm efficiency.

For the purposes of the interim regulations, we have decided to use discount rates which are the means of samples of firm's real, after-tax, weighted averaged marginal cost of capital. These means are the results of a contractor study performed for ERA. The contractor analyzed a sample of over 100 Class A and Class B utilities and a sample of 50 energy-intensive industrial firms. The mean discount rate of the utility sample was 2.9 percent per annum, and the mean of the industrial firm sample was 7.7 percent per annum. We decided to use this particular study as a basis for setting the discount rate because it was more narrowly focused on the population most likely affected by FUA than other studies available to us. A summary of the study will be published in the Federal Register shortly. A copy of the report will be placed in the record of this rulemaking and will be available from ERA. We particularly invite comments on this study.

d. *Capital costs/outlays.* Numerous comments expressed the position that we have too narrowly restricted the cost items that can be included in "capital" costs in the proposed regulations. It was suggested that such costs must include land, rail/barge facilities, pollution control facilities, environmental offsets, and transmission costs.

After consideration of the comments, we have modified the regulations to provide that you must include all capital items for which cash outlays were required at the time the decision to build the facility was made. Capital outlays must also include outlays for fuel inventories (see below).

e. *Fuel inventories.* In computing capital, ERA will require that you include the facility and fuel costs of inventories which are customary in business practice. ERA has set uniform inventory requirements for steam turbine powerplants, combustion turbine powerplants, combined cycle powerplants and industrial boilers.

Data on fuel inventories on hand at each utility plant in the United States are gathered by the FERC on its Form 4. The data for oil-fired steam turbines and combustion turbine powerplants have been summarized for the years 1975 and 1976. For oil-fired steam turbine plants, the inventories were 81 and 75 days in 1975 and 1976, respectively; the average was 78 days of inventories. For gas turbines, 157 and 128 days of inventories were on hand in 1975 and 1976; the 2-year average was 142 days.

As for inventories held by major industrial users, the Strategic Petroleum Reserve Office of DOE has contracted for a study to be made of industrial inventory management in industry. This report, "Inventory Management in the Petroleum Industry," prepared by DOE under contract CR-13-70083-00, is the basis for our estimates of inventory practice by industry. Industry storage capacity is estimated at 2-to-4-weeks with the storage capacity maintained at one-half to two-thirds full. Therefore, we have concluded that common industry practice is to maintain 21 days' storage or keep installed storage tanks 60 percent full, whichever is greater.

ERA will treat fuel inventory for combined-cycle powerplants as being the same as combustion turbines—142 days. ERA will require that for the following facilities you include the following fuel supplies: steam turbine powerplants, 78 days; combustion turbine powerplants, 142 days; combined-cycle powerplants, 142 days; industrial boilers, 21 days or 60 percent of the installed storage volume, whichever is greater.

ERA intends to periodically update this data. ERA requests comments on the data it has used and on whether these inventories should be based on regional data. ERA is also considering the use of a uniform inventory specifications of 180 days. We invite comment on that proposal.

f. *Annual capacity factor.* In the proposed regulations we assumed 70 percent annual capacity factor for new powerplants in cost computations for exemption petitions but proposed to permit you to rebut the 70 percent assumption by demonstrating that your powerplant for which you seek an exemption would operate at an average capacity factor significantly different from 70 percent over the life of the unit. We also proposed to presume a 60 percent annual capacity factor for operation of a new installation in your cost computations, which could be rebutted with suitable engineering evidence.

The comments received on the annual capacity factor issue (1) suggested that ERA should make no presumptions of a particular annual capacity factor for installations as significant variances exist among units and (2) characterized the presumed 70 percent annual capacity factor for powerplants as unrealistic.

We partially agree with these comments and have modified the regulations accordingly. Thus, under the interim regulations, if you operate a powerplant and are computing cost calculations for use in an exemption petition for that powerplant, you may either (1) use an annual capacity factor of 70 percent or (2) conduct an analysis in which you economically dispatch the particular powerplant with all other powerplants on a regional basis. If you are granted an exemption on the basis of a petition in which you conducted your analysis on a regional basis, the exemption will be conditioned upon your not operating the proposed powerplant at an annual capacity factor higher than the one you developed in the dispatch analysis.

If you operate an installation and are computing cost calculations for use in an exemption petition for that facility, you must specify the annual amount of fuel that you will use in your facility rather than use an annual capacity factor. If we then grant the exemption you request in your petition, it will be conditioned upon your use of no more than the maximum amount of fuel you could have specified in your petition and still have been granted the cost exemption.

g. *Operating costs.* Comments also took the position that we have not properly identified the fixed and variable operating costs and that costs should reflect fuel, labor, maintenance, materials, utilities, taxes, insurance, and overhead expenses. After considering the comments, we have made the appropriate modifications so that you must include in your cost calculations all annual expenses for which you will be required to make cash outlays.

h. *Useful life of a facility.* The proposed regulations provide for a 35-year useful life for a powerplant and a 40-year useful life for an installation. Numerous comments favored equating a facility's useful life to its economic life or the venture life of the enterprise in which it is used. Alternatively, it was suggested that the useful life of a unit should be equated with the useful life used by the Internal Revenue Service for tax purposes.

We have considered these arguments but have decided that, with the exception of nuclear powerplants for which the useful life will be 40 years, no changes in useful life presumptions are necessary. For the purposes of FUA, the life of a facility must remain an approximation of its physical life and cannot be equated with the tax life of the unit or the venture life of the enterprise in which the unit will be involved.

i. *Interest paid during construction.* It was noted in the comments that the interest paid during the construction of a facility is an unavoidable and significant part of the capital cost of a new powerplant. Since such payments are factors that are permitted to be considered in a powerplant's rate base, it was argued that they should also be included in cost comparisons for purposes of petitioning for exemptions under the Act.

We agree that outlays incurred during a facility's construction should be included in the calculations, and we have modified them appropriately. The outlays made in the years prior to your facility's commencement of operations are to be forward-valued from the year the outlay occurs to the year before the plant becomes operational. However, we will not recognize interest, *per se*, accrued during construction, as a capital outlay. Interest costs are imbedded in the cost of capital and are implicitly recognized in the discount rate used in the cost test. We recognize that certain jurisdictions permit utilities to capitalize interest during construction while others recognize capital expenditures as they are made through permitting cost of work in progress (CWIP) in the rate base. For the purposes of computing cost, we believe that recognition of capital outlays as they are made is compatible with the satutory definition of cost.

j. *After-tax treatment.* Comments noted that the "before income tax" treatment used in cost calculation for powerplants is inconsistent with the "after income tax" treatment accorded installations. We have revised the interim regulations to eliminate this inconsistency by providing for cost calculations to be made on an "after income tax" basis for all facilities. We have chosen after-tax treatment to reflect cash flows and not social costs; social costs are reflected in the substantially exceeds index. The tax rate will be the firm's marginal Federal income tax rate.

k. *Investment tax credits and accelerated depreciation.* A number of commentors stated that the treatment of investment tax credits and accelerated depreciation in the proposed rules was not in accordance with the Energy Tax Act of 1978. The interim regulations recognize tax credits and depreciation methods allowed at the time the petition is submitted.

l. *Consultation with State regulatory authorities.* Several commentors also noted that the proposed rules do not provide for consultation between ERA and the relevant State regulatory authorities on the determination of costs, in the case of a powerplant, as required by Section 103(a)(20) of the Act. ERA intends to submit copies of all petitions for powerplant exemptions requiring the use of the cost test to the appropriate State regulatory authority for review. ERA will consider all comments made by such authorities before granting or denying a petition by final order.

m. *Special cost test.* The special cost test, which is a comparison of cash flows over the life of the exemption, has been modified so that it is more consistent with the definition of cost as contained in FUA. The value of the discounted cash flow of the capital investment is now annualized. This annualized value, operating and maintenance cash outlays, and fuel cash outlays are then discounted over the life of the exemption. Your comments on this modification are solicited.

n. *Price projections.* The proposed regulation specified that all expenditures be expressed in real terms using the prices in effect at the time the petition is submitted. Commentors observed that this treatment assumes that all costs escalate at the same rate and recommended that the petitioners have the option of using differing justifiable escalation rates. Commentors were particularly concerned about not being allowed to recognize the impact of escalating costs of oil.

For administrative simplicity ERA will require the use of real prices in effect at the time the petition is submitted. We do, however, recognize the relative escalations in fuel prices (along with other factors) which are embedded in the substantially exceeds index.

o. *Fuel price.* The proposed regulations contained a formula for adjusting the price of petroleum products so that it would approximate the replacement price. The proposed regulation also required you to use the price of No. 2 distillate fuel oil as your fuel price if you planned to use natural gas.

Commentors correctly pointed out that the formula overstated the replacement cost of the fuel in two ways. First, if the petitioner is planning to use imported petroleum products, the formula should not be applied. The fuel price is its replacement price. Secondly, where the petitioner used domestic petroleum products, the total price of the product was adjusted. The portion which should have been adjusted was the crude oil used in the refining process and not the value added by refining, transportation, marketing, etc.

Commentors recommended that petitioners proposing to use natural gas be allowed to use the price of No. 6 residual fuel oil instead of the price of No. 2 distillate fuel oil in the cost calculations. Some of the commentors pointed out that requiring a petitioner to use the price of distillate for a proposed gas-fired facility ERA would create an incentive for petitioners to propose using residual oil rather than natural gas.

After considering the comments, we have decided to modify the formulas used to compute fuel prices; however, the goal of approximating replacement price is unchanged. If you use an imported, refined petroleum product, your fuel price will be the price you pay for it plus the entitlements received by the importer, if any. If you use domestically refined petroleum products, your fuel price will be increased by the difference between the price of imported crude oil and the price of composite crude oil.

ERA has re-evaluated the potential impact of requiring the use of distillate oil rather than residual oil for proposed gas-fired facilities and shares the concerns expressed by the commentors. In order to eliminate the incentive to propose oil use rather than gas use, ERA will require the use of No. 6 residual fuel oil prices. However, No. 6 residual fuel oil must meet the air quality standards of your air quality region.

General Requirement—No Alternative Power Supply (§ 503.7)

In Section 503.7 of the proposed regulations published at 44 FR 5815 (January 29, 1979), ERA set forth the criteria for demonstrating that there is no alternative supply of power. Many comments were received in response to this proposal.

A few commenters stated that by imposing conservation measures under the regulation ERA is indirectly regulating utility rate structures which is not authorized under FUA or PURPA. ERA does not intend to regulate rate structures either directly or indirectly. However, in making its determination on alternate supply of power, ERA will require information as to whether the petitioner has considered certain conservation programs, whether they are cost effective, and how they were or will be implemented. In addition, if the programs were determined by the utility to be cost effective but are not being implemented, the utility will be expected to offer an explanation. Rate designs which support fuel conservation are one of many possible programs which can be examined in this manner.

Many of the comments stated that ERA has no authority to require that a utility meet load requirements with existing facilities by improving the performance of existing facilities, employing system conservation resources, implementing load management techniques and assisting end use customers to conserve electricity. They state that this requirement conflicts with various state laws and with the National Conservation Policy Act (NECPA) and the Public Utility Regulatory Policies Act (PURPA). The FUA does not require such techniques, but allows ERA to limit the use of oil or gas if there is some potential for savings through conservation. ERA believes that energy made available through the efficient use of existing facilities and the implementation of cost-effective conservation measures should be considered as alternate supplies of power within the meaning of Section 213(c) of the Act. ERA has revised the regulations to require such measures only when they are cost-effective. ERA invites your comments on how best to determine whether a particular fuel conservation measure is cost-effective relative to the construction of a new plant. A number of state public utility commissions and attorneys general commented favorably on ERA's proposals under this section. They stated that the conservation provisions of § 503.7 are of critical importance since they recognize the need for conservation, improving performance of existing systems and load management techniques as power supply alternatives. In implementing this section ERA will not impose any requirements that are in conflict with state laws, PURPA or NECPA.

In the proposed regulation petitioners were required to evaluate purchasing electricity until an alternate fuel-fired plant could be operational as well as separately evaluating both purchasing electricity and operating an alternate fuel-fired plant. Several comments state that purchasing power for extended periods of time is not a reasonable option because no region would have excess capacity over such a long period. ERA has modified this requirement. Section 503.7(b)(2) now requires petitioners to examine the availability of purchased power and conservation measures as a reasonable option during the first year of scheduled operation for the proposed oil- or gas-fired unit. Petitioners would have to demonstrate that the reserve margin in the electric region would fall below 20 percent in the absence of the proposed plant during the first year of proposed operation after considering conservation measures and purchasing power in order to meet the criteria for this requirement. ERA may consider certain cases where the reserve margin exceeds 20 percent with suitable justification from the petitioner.

However, if the utility's proposed plant would not become operational within a few years, ERA may not agree that purchased power will be unavailable for the first year of scheduled operation. Projecting future demand for more than a few years is speculative due in part to the recent slowdown in demand growth. In an electric region or on a large utility system a small percent decrease in the annual growth rate of demand could eliminate the need for the additional powerplant. The showing required by the Act concerning the unavailability of an alternate supply or power is a showing that an alternate supply will not be available when it is needed. If the period in question is too far in the future, it may be premature to conclude that an alternate supply will not be available when it is needed, notwithstanding a present inability to obtain a satisfactory commitment from an alternate source.

Several commenters argued that Section 213(c) of FUA does not authorize ERA to require a consideration of alternate fuel-fired powerplants as an alternate power supply. They support their argument by asserting that Congress did not intend that petitioners seeking exemptions under Sections 212(d), mixtures; (e), emergency purposes; and (f), reliability, of FUA be required to examine alternative sites as required in § 503.7. The commenters contend that Section 213(c) of FUA only required consideration of purchasing power from other utilities. ERA has modified the regulations to eliminate the requirement that petitioners consider alternate fuel-fired powerplants under this section of the regulations.

ERA received several comments recommending that the term "reasonable distance," as used in § 503.7 of this Interim Rule, should be treated as a factor independent of cost considerations. Defining unreasonable distance in cost terms, it is argued, is not what Congress intended, and the reasonable distance concept should be explicitly defined as including either the state or some region less than the electrical region.

ERA's Interim Rule on alternate supply of power requires that the utility examine alternative sources of purchased power. First, with respect to purchased power, ERA believes that it is in accord with the intent of the Act in defining "reasonable distance" to include the concept of "reasonable cost" (including transmission cost). Second, ERA has defined the area of solicitation. ERA believes that the utility should determine the availability of firm purchased power by soliciting through letter exchanges and advertisements offers to sell power from all utilities within or contiguous to the electric region, from all nonutility suppliers within the petitioner's service area, and from such other sources as ERA may suggest. And third, ERA will additionally consider any factors cited by the utility that it feels renders a distance unreasonable, even though the cost is reasonable.

Several comments received by ERA suggest that the determination of "reasonable cost" under Section 213(c) of the Act should not be equated with the cost test under the alternate fuel supply exemption, which serves as the determinant of a "substantially exceeds" cost standard. ERA agrees and has revised this regulation to add a new test for determination of the reasonable cost standard for alternate supply of power. This test, which is independent of the "substantially exceeds" cost test, requires a demonstration that you made diligent efforts to purchase firm power for the first year of operation of your proposed powerplant at a cost that is less than 10 percent above the annualized average cost of generating power in such powerplant. ERA has specified certain costs which you must include, but you may select your own cost computation methodology (provided that your results serve as a meaningful basis for comparison with the costs of purchased power).

Several comments stated that § 503.7 failed to require that ERA consult with the FERC before making any findings under Section 213(c) of FUA. ERA has corrected this omission by adding § 503.7(d) to the regulations.

One comment noted that ERA's data requirements on retirements and on other areas are difficult to obtain. ERA has simplified that data requirements by focusing the reliability determination upon the first year of operation of your proposed powerplant. ERA may arrange with the National Electric Reliability Councils to collect data pertinent to the utilities in their respective electric regions, and this data will then be made available to the petitioning utilities.

A few comments requested that ERA only consider contracts for the purchase of firm power under § 503.7(b)(4) of the proposed regulation and that contracts for interruptible power or power subject to energy payback should be excluded from consideration. ERA has modified the regulation to make clear that only firm power contracts need be considered.

Several comments contend that the requirement that purchased power be considered before an exemption will be granted will force most municipal systems to become merely distributors of power rather than generators of power. FUA requires that purchased power be considered before an oil- or gas-fired plant can be built. ERA's regulations conform with this FUA requirement.

Several comments note that by recognizing purchased power as an alternate fuel, the regulation may serve to promote the use of older, less efficient oil-fired plants. They state that by building the proposed oil-fired plant, overall oil consumption may be lowered. ERA recognizes that one of the purposes of FUA was to promote the replacement of old inefficient oil- or gas-fired plants with new efficient oil- or gas-fired plants. ERA believes, however, that that purpose must be accommodated to the overriding central purpose of FUA, which is to displace and conserve oil or gas. Indeed, Section 102(b)(7) states that the purpose is to encourage the modernization of only those oil or gas burning units that cannot utilize coal or other alternate fuels. To read Section 213(c) as these commenters do would largely take away is meaning and would not further the overriding purpose of the Act. (See Preamble, § 504.1, Increased Use of Petroleum by Existing Powerplants for a discussion of use of purchased power for the purposes of that particular section.) The Act was intended to prevent the construction of new non-essential oil- or gas-fired plants. The use of these old powerplants is intended to provide a stop gap until the utility brings an alternate fuel-fired powerplant on line.

A number of comments pointed out that by reducing the alternate power supply requirement to a cost test and reliability analysis, ERA is ignoring the possibility of regulatory and construction delays as well as other impediments to satisfaction of the powerplant's scheduled date to become operational.

ERA has revised this section to require examination of the availability of purchased power during the first year of scheduled operation for your proposed oil- or gas-fired unit. Since this section no longer requires an examination of alternative powerplants, the effect of regulatory delays and the like are not relevant to alternate power supply.

Use of Mixtures—Temporary Exemptions (§§ 503.8 and 505.6)

The proposed rules contained a general requirement that petitioners for any temporary exemption must demonstrate whether the use of a mixture is economically and technically feasible during the period of the proposed exemption. Several commenters pointed out that while such a demonstration is required by the Act as a condition of approval of most permanent exemptions, the Act does not require the demonstration relevant to temporary exemptions and that ERA has no authority to impose this requirement in the regulations.

In view of the public comments and the fact that petitioners for temporary exemptions are committed to comply with the prohibitions of the Act through the future use of alternate fuel, ERA has deleted the subject requirement from these interim regulations.

Use of Mixtures—Permanent Exemptions (§§ 503.9 and 505.7)

ERA received comments that since fuel mixtures are not readily available for commerical use, a petitioner for a permanent exemption should not be required to consider a particular mixture until ERA and industry agree that the use of the mixture is feasible in any industrial application. The commenters evidently were referring to specific mixtures such as certain types of coal/oil slurries. The Act, however, defines "mixture" as a combination of fuels burned simultaneously or *alternately* in the same unit. Many mixtures of petroleum or natural gas and alternate fuels are currently being used commercially, such as mixes of wood or wood products and oil, and waste gases or byproducts and natural gas. Therefore, ERA is adopting the rule as proposed.

Use of Fluidized Bed Combustion (§§ 503.10 and 505.8)

Commenters stated that ERA has, in effect, shifted the burden of finding technical or economic infeasibility for fluidized bed combustion (FBC) by requiring a petitioner for a permanent exemption to examine in the Fuels Decision Report the feasibility of utilizing fluidized bed combustion technology. The commenters stated that the Secretary, not the petitioner, has the responsibility of making the feasibility finding pursuant to section 213(a) of the Act. ERA concurs and the regulations have been modified accordingly. The interim regulations now state that a petitioner will not have to make a demonstration concerning the technical and economic feasibility of fluidized bed combustion *unless* ERA has made a generic or site-specific finding.

In recognition that fluidized bed combustion units of the size covered by FUA are not yet commercially available, ERA solicited comments on what criteria the agency should use to make a site-specific or generic finding that the use of a method of fluidized bed combustion is feasible. Some commenters asserted that ERA is not authorized to make a generic feasibility finding, but instead may only make a site-specific finding. We believe that we may make either a site-specific or generic feasibility finding, since the legislation does not specify the type of finding required.

With respect to the criteria which should serve as the basis for such a finding, commenters disagreed with our suggestions that a demonstration project, engineering studies or reports, or the first sale of a prototype unit would be sufficient. One commenter felt that a feasibility finding could not be made until two to four units of the size covered by the regulations have been in use at least 1 year. Another commenter stated that 10 large units must be in reliable service prior to making a feasibility finding.

We have not yet decided what criteria we will use to make a finding. In concert with DOE's Offices of Energy Technology and Resource Applications, we intend to monitor the development of fluidized bed technology. When the offices agree that the technology has progressed sufficiently, we will initiate a rulemaking proceeding to determine whether a generic finding can be made that a method of fluidized bed combustion is technically and economically feasible. Issues such as (1) the criteria which should serve as a basis for the finding; (2) the capability of FBC to meet variable heat requirements; and (3) other technical issues raised in response to the November 17, 1978 Federal Register Notice will be addressed in that future rulemaking. Prior to and after such rulemaking, if necessary, ERA reserves the right to make site-specific findings of feasibility. As with generic findings, these findings would be rebuttable under the provisions of §§ 503.10 and 505.8 of these regulations.

Alternate Site (§ 503.11)

The Act provides that, in order to qualify for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to raise capital, state or local requirements, or intermediate load, you must show that your powerplant cannot use alternate fuels at reasonable alternative sites. ERA proposed criteria for determining reasonable alternative sites in § 503.11 of the November 17, 1978 proposed regulations.

Comment was received that EPA had exceeded its legal authority and was unreasonable in insisting that utilities consider sites outside various geographical areas. EPA disagrees and notes that it is not rare for utilities to consider sites far outside their geographic areas. Therefore, ERA has not changed the proposed criteria.

Terms and Conditions (§ 503.12 and § 505.9)

Commenters stated that ERA had overstated the purpose of Section 214 of the Act which provides the Secretary with the authority to prescribe terms and conditions for any exemption granted. We are convinced that Section 214 gives the Secretary broad responsibility to prescribe such terms and conditions as he deems appropriate. In doing so, Congress has placed a heavy responsibility on the Secretary to ensure that the objectives of the Act are maintained through this section. We recognize, however, that we may not and certainly will not impose terms and conditions which are so arbitrary and capricious as to be unreasonable.

Other commenters contended that ERA cannot condition exemptions on the implementation of conservation measures, since such requirements are contrary to the provisions of the National Energy Conservation Policy Act (NECPA). In addition, comments were received which contended that conservation measures could be imposed only on the unit. Finally, comments were received which stated that ERA could not condition an exemption on the type of oil or gas used.

Based upon the explicit language of Section 214(a) of the Act, ERA has the authority to impose any reasonable terms and conditions it deems appropriate, including terms and conditions requiring the use of effective conservation measures which are practicable and consistent *with the purposes of the Act.* The purposes of the Act explicitly address the need to reduce oil imports, to minimize the use of petroleum and natural gas, and to conserve petroleum and natural gas for future generations. Thus, we believe that Section 214(a) gives us the authority to impose such conditions as the efficient use of oil and gas at a site, and the use of a fuel which best meets the purposes of the Act. ERA has no intention of imposing conditions which would require noncompliance with other statutes such as NECPA.

In the preamble to the proposed rule, ERA stated that it was considering conditioning an exemption which allows a petitioner to use oil on a requirement that he use no more than a specified minimum amount of oil, or possibly use no oil at all, in the exempt unit in the event of a national emergency which results in the reimposition of oil allocation controls. Commenters stated that ERA has no authority to impose such a condition since such authority to prohibit oil or gas use is vested in the President pursuant to section 404(b) of FUA. We will limit any prohibitions to the scope of our legal authority, and believe that this issue is best resolved in the context of a particular case.

The suggestion was made that ERA should define the term "milestone" as it applies to the revision of compliance plans. Because of the individual nature of each exemption which may be granted, the meaning of this term will differ with each petitioner. Therefore, milestones will be indentified on a case-by-case basis.

Lack of Alternate fuel Supply (§§ 503.21, 503.31, 505.11, and 505.21)

In the November 17, 1978 Federal Register notice, we proposed, under the Evidence portion of this exemption, that the petitioner solicit at least three bids from at least 25 percent of the supplier market for an adequate and reliable supply of alternate fuel. The comments received indicated that this requirement was ambiguous. If fewer than three suppliers comprise 25 percent of the supplier market, must the company get a minimum of three bids anyway? If five suppliers comprise 25 percent of the supplier market, must the company get three or five bids?

ERA recognized that the requirement raises the question of what constitutes 25 percent of the supplier market, and that it might be anti-competitive since it tends to favor large companies over smaller companies. We have therefore changed the language in the Interim Regulations to state "at least five bids from suppliers who could reasonably be expected to supply an adequate and reliable supply of the quality and quantity of alternate fuel needed." The submission of five bids will not automatically fulfill the requirements for the evidence supporting the petition. If we determine that the bids submitted are not a representative sampling of the suppliers who can be reasonably expected to provide an adequate and reliable supply of the particular alternate fuel, we may require additional bids before making our decision on the exemption.

We believe that the revised language will encourage petitioners to seek supplies from both large and small companies, since the requirement has been changed to include bids from only companies which can actually provide supplies of alternate fuels. In addition, we expect that the revised language will assure that a good faith effort is made by the petitioner in seeking his bids.

Federal/State Environmental Requirements (§§ 503.23, 503.34, 505.13, and 505.24)

A number of commenters objected to the requirement in the proposed regulations that an applicant for a permanent exemption on environmental grounds first apply for all necessary environmental permits and receive a final determination from EPA or the state prior to petitioning for an exemption from ERA. Some commenters recommended that this requirement be dropped entirely; others advised that it be used only in those cases in which an applicant's ability to comply with environmental requirements could not be easily determined by submission of other evidence or by joint consultation between the applicant, ERA, and the appropriate agencies. Some commenters suggested simultaneous filing of permit applications and petitions for exemption, while others proposed that ERA process its own petition first but leave the final determination up to EPA and other permitting agencies.

As a result of these comments, we have dropped the requirement that an applicant receive Federal and State environmental permit denials prior to petitioning for an exemption and, instead, have made the permit process an option the applicant is free to pursue at any stage of the petitioning process if he believes that this evidence would strengthen his case for an environmental exemption. If the applicant does elect this option, however, he must submit to ERA a copy of the permit application, as well as any supporting documentation, administrative records, and permit decisions as these items become available. All other evidence required by paragraph (b) of §§ 503.34 and 505.24 is necessary, at a minimum, to support the applicant's claim, and the regulations have been revised to describe these mandatory requirements in greater detail. The same subsection also allows the applicant to submit any additional documentation that he believes would be useful.

Regardless of which option the applicant decides to puruse, ERA encourages the applicant, prior to deciding to submit an exemption petition, to consult with EPA and other applicable permitting authorities regarding options for operating an alternate fuel-fired facility in compliance with applicable environmental requirements. The applicant may also seek consultations with EPA and ERA jointly.

We believe that this change in the exemption process will serve to emphasize the primary test for obtaining an environmental exemption; namely, the showing of physical (as opposed to economic) impossibility of complying with applicable environmental requirements. A permit denial may be submitted as evidence of an inability to comply with environmental requirements, but that evidence alone does not automatically qualify a petitioner for an environmental exemption. The presentation to the State or Federal permitting agency will not necessarily address alternate fuels or methods of compliance or their costs—all central concerns under FUA. Moreover, the mission of environmental permitting agencies is to pass upon the particular fuel and method of compliance proposed by the applicant. Their mission is not to seek out and insure that the petitioner has considered all reasonably available alternate fuels, and all other reasonably possible ways of complying, nor is their mission to insure that petitioner's cost esimates for compliance are reasonable. In short, the permitting agencies may be institutionally indifferent to an applicant's inability to comply by means of a particular fuel and method of compliance which he has chosen, or to the fact that the method which he has chosen is very expensive. Because the scope of inquiry of the permitting agencies is so different from that of ERA under FUA, denial of a permit cannot of itself be dispositive of an environmental exemption application.

Thus, we will evaluate all of the evidence submitted, which must include, at a minimum, the material requested in § 503.34(b) (5) and (6) and § 505.24(b) (5) and (6), to determine whether you have demonstrated that, despite the use of pollution control equipment which would provide for maximum possible pollution reduction, and despite examination of the regulatory options available to you, you cannot comply with applicable environmental requirements with use of any of the available alternate fuels.

We recognize that meeting the burden of physical impossibility by showing that maximum possible pollution reduction cannot achieve compliance with applicable environmental requirements may result in a showing that goes beyond that required when seeking a construction permit. For example, if you propose to locate in a Prevention of Significant Deterioration (PSD) area, for purposes of an environmental requirements exemption, you must show inability to comply with environmental requirements using pollution control equipment which would provide the maximum possible degree of reduction despite the fact that EPA or the state may require a less stringent standard. Under these circumstances, the fact that you may not be able to secure a permit (or may have already been denied a permit) for a facility at which you proposed to install technology generally recognized as BACT is not controlling in establishing whether it is physically possible to comply with applicable environmental requirements. You must establish that even if you were to take all actions possible, the facility could not comply with the applicable requirements. Failure adequately to provide this evidence will result in a rejection of your petition.

A few commenters, including EPA, objected to the requirement that an applicant for an environmental exemption also attempt to secure variances, SIP revisions and redesignations of PSD areas on the grounds that this is not authorized by FUA. Such comments relied on the provisions in the Act which state that the Act should not be construed to permit any existing or new source to delay or avoid compliance with applicable environmental requirements.

This evidentiary requirement, however, does not delay nor avoid environmental compliance, but rather requires analysis of the availability of all options available to any source in attempting to meet Federal and State environmental requirements. We believe not only that FUA allows ERA to require such an analysis, but also that the legislative intent is clear that inquiry into the availability of regulatory options should be an integral part of a diligent and good faith attempt to bring a facility into environmental compliance while using an alternate fuel. Section 103(a)(17)(A) of FUA defines "applicable environmental requirement" to include "any standard, limitation or other requirement . . . taking into account any variance of law. . . ." Congress thus intended that applicable environmental requirements not be narrowly construed to mean only standards, criteria or other specific limitations on pollution. Rather, it should be interpreted broadly to mean all requirements which could be imposed or allowed by the appropriate legislation. This clearly must include those regulatory options, such as variances and SIP revisions, which, if obtained, would allow construction and operation of a facility in compliance with that legislation. Until these options are pursued, we cannot establish the limits of what constitutes applicable environmental requirements in a particular case.

There is an additional line of argument from a policy perspective. Without the exemption provisions, you would be faced with the choice under the FUA prohibitions of compliance or of not constructing the facility. We reasonably assume that under those circumstances you would pursue all regulatory options available to you in a sincere effort to construct the facility. We, therefore, believe that it is also reasonable to require you to pursue those options with equal diligence in order to establish your good faith effort to comply, which effort is a statutory prerequisite to obtaining an exemption on environmental grounds.

Furthermore, the language of § 503.34(b)(5) and § 505.24(b)(5) is tempered by the phrase "as appropriate," indicating that you are to pursue these regulatory options only insofar as they are actually feasible. However, you bear the burden of establishing both which options are feasible in your case and what evidence is sufficient to show they were pursued to a satisfactory conclusion. We believe that this requirement provides for a workable accommodation between ERA and the appropriate Federal and State environmental laws, given the clear prohibitions of FUA and the expansive definition of applicable environmental requirements contained in it.

In the case of redesignations of Class 2 areas, ERA had decided to delete the requirement because it places too much of a burden on a single facility. Unlike SIP revisions and variances which may be site-specific, redesignations normally apply to large areas of land and would affect existing as well as new facilities in that area.

Some commenters suggested that ERA should treat facilities located in nonattainment areas differently from those located in PSD areas. The comments ranged from requiring less evidence to support an exemption petition from petitioners proposing to construct in nonattainment areas to making a generic determination that no facility whose siting would trigger offsets or equivalent State requirements be required to burn coal.

At this time, ERA does not believe that nonattainment areas should be treated any differently from PSD areas since siting a facility in a clean area may be just as difficult as in a dirty area, depending on the individual circumstances. In regard to offsets, ERA does not agree that this requirement should be treated differently from other applicable environmental requirements. The offset policy was promulgated by EPA to allow for growth in nonattainment areas, and it would be inconsistent with FUA to reserve such growth for oil or gas fired facilities.

Future Use of Synthetic Fuel (§ 503.24 and § 505.14)

A number of commenters suggested that the regulations should not require a petitioner who is requesting a temporary exemption for the use of synthetic fuels to demonstrate that he cannot comply with the prohibitions of the Act by using an alternate fuel before the end of the proposed exemption period. The comments state that the Act only requires that the petitioner show that he cannot comply with such prohibitions by using a synthetic fuel until the end of the proposed exemption. ERA agrees with these comments and has changed the Interim Regulations accordingly.

Several commenters state that it is not possible to obtain binding contracts for synthetic fuel at the present time, and suggested that ERA grant the temporary exemption if the petitioner can demonstrate that he has, in good faith, entered into an agreement with a fuel broker to purchase specified quantities of synthetic fuels at a reasonable cost in return for the broker's commitment to exercise his best efforts to secure such fuel. Section 214(b) of the Act requires that a compliance plan incude "evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for . . . compliance [with the applicable prohibitons of the Act]." In addition, the Conference Report states that the required compliance plan for this exemption must include "evidence of binding contracts obligating the petitioner and supplier to provide the synthetic gas." S. Rep. No. 95-988, 95th Cong., 2nd Sess., p. 79 (October 10, 1978). We believe that the above language requires that a petitioner produce evidence of a binding agreement with a supplier of synthetic fuel or evidence of facilities for the production of synthetic fuel before we may grant an exemption.

A number of commenters suggest that DOE should act as a broker for synthetic fuel contracts to ensure synthetic fuel development. While DOE is working closely with industry to develop synthetic fuel, we believe that it is beyond the scope of ERA's authority, at least, to act as a broker in a synthetic fuel sales contract.

A number of commenters asked what would result if a synthetic fuel exemption expires (including any extension that may be granted) before a synthetic fuel can be used in the facility. We believe that in such an instance the facility will be subject to the prohibitions of the Act.

Temporary Public Interest Exemption (§ 503.25 and § 505.15)

A number of commenters objected to the costly and time-consuming process of completing an FDR, demonstrating that they are ineligible for other temporary exemptions, and proving they cannot use mixtures. Other commenters felt the term "public interest" should be more specifically defined and even broadened to include considerations of local environmental regulations as well as impacts on the economy and employment.

ERA has, in this Interim Rule, removed the requirement that you must, before being eligible for this exemption, demonstrate that you are not eligible for a temporary exemption based upon lack of alternate fuel supply, site limitations, and environmental requirements. In order to ensure that the net effect of granting the exemption is in the public interest, ERA will require only that you file a highly abbreviated FDR and demonstrate the inability to burn mixtures during the period the exemption is in effect. ERA may, nevertheless, waive all or portions of these requirements at a prepetition conference where justified by the conditions of the case.

In regard to specifically designating the term "public interest," Congress has given ERA discretion to decide the nature of the "public interest" in respect to FUA on a case-by-case basis. Any attempt to specifically define that term comprehensively could not encompass the wide variety of cases which could arise under this exemption category. As experience is gained under the Act, however, it might become possible to define particular sub-categories of public interest exemptions, as was done in the instance of the Special Public Interest Exemption For Use Of Natural Gas In Existing Facilities.

Impediments to alternate fuel burning as a result of local environmental regulations, however, should normally be considered under the State/Local Exemption.

Capital Availability Exemption (§ 503.35 and § 505.25)

Section 212(a) of the Act requires ERA to grant a permanent exemption from the Act's prohibitions wherever the use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of a powerplant or installation.

1. Powerplants. § 503.35

The proposed regulation provided that, in order to qualify for this exemption, a petitioner must demonstrate that, despite good faith efforts to raise the additional capital required for an alternate fuel facility beyond that required for his proposed facility, the petitioner could not raise the necessary capital due to specific restrictions which could not be alleviated by the action of an appropriate regulatory authority.

The comments received by ERA pointed out (1) that the term "specific restrictions" on the ability of a utility to raise debt and equity capital needed clarification; (2) that the exemption would be essentially voided if a petitioner were required to show that the specific restrictions of his particular case could not be alleviated by the action of an appropriate regulatory authority; and (3) that the management projections of a utility's financial condition called for as evidence in support of an exemption petition could become the subject of litigation or affect rate cases.

After consideration of these comments, we have made some modifications to our proposed regulations. We have revised the proposed regulations to indicate that "specific restrictions" refer to limiting factors on a utility's ability to raise capital such as covenants on existing bonds. We have, however, retained the requirement that you demonstrate in your exemption petition that the specific restrictions pertaining to your utility cannot be alleviated by the action of the appropriate regulatory authority. The retention of this requirement is necessary to preclude national policy on fuel use being constrained by varying state regulatory policies. However, we are concerned about the effect of this requirement on small utilities. Therefore, we are considering limiting this requirement to class A and B utilities as defined by FERC.

We request your comments on the effects of this requirement on small utilities.

We have also retained the requirement for submission as evidence of management projections of financial conditions which are necessary in order for ERA to properly evaluate whether a petition requesting an exemption due to inability to raise adequate capital should be granted.

If you would like us to consider these projections confidential, appropriate provisions are provided for the treatment of confidential information under part 501 of these regulations.

We solicit your comments on the revisions.

2. Installations. § 505.25

Our rule for installations stipulated that to qualify for this exemption, the incremental amount of capital needed by a petitioner, within a consolidated corporation to use an alternate fuel rather than oil or natural gas, must be equal to or greater than 25 percent of the annual investment expenditures of the consolidated corporation averaged over the last three years. The proposed rule would not have required a new firm, which was not part of a consolidated corporation, to make the initial 25 percent showing, but would have required that the firm demonstrate that, despite its good faith efforts, it could not raise the capital for an alternate fuel facility beyond what it needed for the proposed oil or natural gas-fired facility.

The comments received on these proposed regulations indicated (1) that the proposed criterion—25 percent of the average annual investment expenditures for the past three years—was too arbitrary; (2) that it would be very difficult to identify a "new business firm"; and (3) that each petition should be reviewed on its particular facts (case-by-case) rather than be judged by an established generally-applicable criterion.

We agree with these comments and have modified the regulation accordingly. We have eliminated the concept of "new business firms," and under the interim regulations, each petition will be considered on a case-by-case basis. You will be required to demonstrate that, despite your diligent good faith efforts, you could not raise the additional capital required for an alternate fuel facility or that this inability is due to the existence of specific restrictions on your ability to raise debt and quity capital such as pre-existing, binding convenants on bonds.

We solicit your comments on these interim rules with respect to installations.

State and Local Requirements (§ 503.36 and 505.26)

Several commenters stated that a petitioner should not be required to provide an analysis of why it would be ineligible for a general exemption.

The State or local exemption is designed to provide a discretionary exemption allowing the burning of oil or gas in the instance where a petitioner could burn coal but for a local or a State requirement. (The local or State requirement cannot be a building code, nuisance or zoning law, and in the case of a State requirement, will be a requirement other than an applicable environmental requirement.) As stated in the Conference Report, the petitioner must demonstrate an inability to comply with the prohibitions, "because of the existence of a State or local law." S. Report No. 95-988, 95th Cong. 2nd Sess., 76 (1978).

If there are other reasons why the petitioner cannot comply, namely, the reasons which would entitle him to a general exemption, then he is not entitled to the State or local exemption because he is not in the situation that the State or local exemption was designed to resolve. The State or local exemption isolates the situation where a State or local requirement is the sole bar to the burning of an alternate fuel. In such a conflict between local or State and Federal interests, the Secretary is given broad discretion to determine whether acceding to the State or local interest "would be in the public interest and consistent with the purposes" of FUA.

One comment suggested that costs related to compliance with State or local requirements be included as a criterion in determining whether construction and/or operation of a facility is infeasible because of that State or local requirement. ERA notes, however, that the conference report states that the appropriate test is whether a State law or a local law would prevent the construction or operation of an alternate fuel-fired facility. Cost is not a criterion. Further, it is ERA's policy to handle all cost-related constraints to alternate fuel burning under the lack of alternate fuel supply exemption.

Several commenters stated that ERA should not require an applicant for this exemption to apply for a variance from the State or local requirement. ERA does not require that all applicants apply for a variance from a State or local requirement; however, ERA does require that an applicant examine the possibility of obtaining a variance and, where circumstances are favorable, ERA would expect the applicant formally to apply for a variance. This is in keeping with the legislative mandate that an applicant must make a good faith effort to comply with the prohibitions of the Act.

Finally, a commenter suggested that petitioner not be required to provide a description of involvement in activities pertaining to the enactment of a State or local requirement prior to April 20, 1977. ERA has adopted this suggestion and the interim rules have been modified to incorporate this comment.

Permanent Exemption for Cogeneration (§ 503.37 and 505.27)

In proposed § 503.37 and § 505.27, we outlined the eligibility, evidence, and reporting requirements that we planned to use in implementing § 212(c) of the Act, permanent exemption for cogeneration. Comments have been received on our proposals and, having been considered, are responded to below.

Most of the comments stated that the burden on a petitioner applying for a cogeneration exemption was far too great and that a petitioner should not have to demonstrate that he could not comply with the applicable prohibitions.

ERA recognizes the benefits of cogeneration and wants to ensure that where oil and gas would be saved, the cogeneration facility is encouraged. Accordingly, ERA has substantially changed the cogeneration regulation. ERA will not require the petitioner to demonstrate that an alternate fuel could not be used by the cogeneration facility. Instead, ERA will require a demonstration that the oil or gas to be consumed by the cogeneration facility will be less than would otherwise be consumed in the absence of the cogeneration facility by units which would not be expected to use an alternate fuel by reason of FUA. The test is whether the cogeneration facility would save oil or gas over and above the savings that FUA could reasonably be expected to achieve.

ERA has categorized the units which would not be expected to use an alternate fuel by reason of FUA. First, there are units that are or would be too small to be covered by the regulations. Second, there are FUA-covered units that are existing non-coal capable units or exempt units, and are less than 40 years old in the case of field-erected units and less than 20 years old in the case of package units. Units that are older than these years could reasonably be expected to be retired soon and, if they were replaced, the replacement unit would have to consider the use of alternate fuels. If a cogeneration exemption is granted, and units less than 20 or 40 years old were included in the calculation of the oil or gas that would have been consumed absent cogeneration, these units would under the regulation then have to be retired or shut down. Third, there may be units that are not yet constructed that would be covered by FUA. To include oil and gas from these projected units in the "otherwise consumed" oil or gas savings calculation, the petitioner would have to demonstrate that each would be entitled to an exemption. In addition to these three categories, oil or gas savings may be attributed to displacing electricity from the grid.

The cogeneration exemption in these regulations also contains a public interest provision. ERA may grant an exemption even if oil or gas savings could not be demonstrated in certain cases where the facility will employ a technical innovation or where the facility would result in retaining industry in urban areas.

Some commenters said that the cogeneration exemption should be granted on the basis of economics, not fuel use. ERA, in its regulation, does not require any showing that cogeneration is economic or that petroleum or natural gas must be used. However, ERA interprets the phrase "other benefits" in the Act to mean that in granting an exemption, oil or gas would be saved and thereby imports reduced. The approach in these regulations, as outlined above, is consistent with the Act, and enables applicants to obtain a cogeneration exemption where cogeneration will save oil or gas over and above the savings the FUA could reasonably be expected to achieve.

A few commenters recommended that a cogeneration exemption not be granted if it would result in displacing coal or nuclear-generated electricity. ERA's use of the oil and gas savings approach takes account of the fuels used to produce the electricity that would be displaced. For example, there would be no savings attributed to that portion of the electricity that would have been produced by coal fired plants. ERA also requires that the fuel displacement calculation be based on a 10-year forecast that includes construction and retirement of plants within those 10 years. Therefore, to the extent that a utility has planned addition of new coal or nuclear plants, a petitioner would not be allowed to include in his oil and gas savings calculations the electricity displacement that is proportionally attributable to those facilities. As an aid to applicants, ERA is considering publishing projected 10-year fuel mix generation tables for electricity on an electric region basis to simplify the oil or gas savings calculations for those petitioners that may want to use them.

One commenter said that a cogeneration exemption should be granted if the facility will eventually use an alternate fuel. ERA notes that such a petition could be granted under the public interest section of the cogeneration exemption/or under an appropriate temporary exemption. However, since the exemption is discretionary, there would have to be a reasonable certainty that the alternate fuel would, in fact, be used.

Several commenters said that mechanical power should be permitted as an alternative to electrical power and that repowering a combustion turbine should be considered as a cogeneration facility. ERA notes that the legislative definition of a cogeneration facility requires that it produce "electric" power and any other form of useful energy (such as steam, gas, or heat) which is or will be used for industrial, commercial or space heating purposes. Adoption of either of these suggestions is therefore precluded. Mechanical power may be considered as an alternative to or in addition to thermal energy as part of the useful nonelectric output of the facility.

One commenter stated that the definition of electric powerplant should be clarified so that cogeneration facilities would be excluded from the electric powerplant definition if less than half of the annual electric power generation is sold for resale or exchanged for resale. Although one might read the Act in such a way, ERA disagrees with this interpretation. The wording of Section 103(a)(7)(A) indicates that a cogeneration facility would be exempt from the definition of electric powerplant only if less than half of the annual power generation was sold (for either resale or end use) or exchanged for resale.

One state recommended that a state should be able to apply for a "generic exemption" for cogeneration units built in accordance with an ERA approved state plan. The state would make a determination on the availability of alternate fuels and the economic justification for the use of oil. The petitioner would only have to certify to ERA that it was in compliance with the state plan. ERA is not prepared to delegate its exemption authority and responsibilities to a state at this time. However, the simplified process provided in these rules should help accomplish the objectives of the state proposal, and certainly encourage a broad systematic approach to fuel use planning.

Permanent Mixtures Exemption

(§ 503.38 and § 505.28)

Several commenters suggested that ERA has no authority to condition the grant of a fuels mixture exemption on a demonstration that the petitioner cannot comply with applicable prohibitions of the Act. ERA concurs and the requirement for this demonstration has been dropped from the regulations.

A number of commenters stated that ERA failed to state that new MFBI's qualifying for fuel mixture exemptions will not be required to use less natural gas or petroleum than 25 percent of the total Btu heat input of the mixture. ERA has revised its eligibility requirements to clarify that it will not require such minimum percentage to be less than 25 percent in orders granting mixtures exemptions to new MFBI's.

There was some question concerning whether a petitioner requesting a mixtures exemption for a new MFBI and proposing to use 25 percent or less oil or gas would be required to demonstrate at the threshold that it was necessary to use any oil or gas at all in order to maintain operational reliability and a reasonable level of fuel efficiency. The statute might be read two ways.

First, it can be read to say that such a petitioner must demonstrate that some use of oil or gas is needed for reliability and fuel efficiency reasons. If ERA decides that the petitioner is eligible for the exemption and grants the exemption, ERA then could not require that the amount of oil or gas used be less than 25 percent of total annual Btu heat input.

Another construction of the Act says that so long as the new MFBI petitioner proposes to use a mixture containing less than 25 percent oil or gas, he does not need to demonstrate that any oil or gas is needed for reliability and fuel efficiency purposes. Instead he merely needs to certify that he will use no more than 25 percent oil or gas in order to be granted the exemption.

While the statute can be read to support the first construction, ERA, as a matter of administrative discretion, has decided that, in the early years of the program, the second construction should be employed to encourage the use of alternative fuels and mixtures. ERA may propose to change this approach in the future if it becomes evident that mixtures exemptions are being requested to avoid compliance with the prohibitions rather than because an amount of oil or gas is actually needed for use with an alternate fuel.

ERA received comments suggesting that the use of less than 25 percent petroleum or natural gas in a mixture should be considered "control use" and therefore excluded from the prohibitions of the Act. ERA concludes that 25 percent petroleum or gas is much more than Congress intended be excluded from the definition of the primary energy source. The interim rules provide that the total amount of petroleum or gas excluded for the purposes enumerated in the definition of primary energy source in Section 103(a)(15)(A) of the Act cannot exceed 5 percent. This 5 percent must be included within the minimum percentages required to maintain reliability of operation for purposes of qualifying for a mixtures exemption.

Some commenters stated that the regulations should foster the use of innovative technologies in mixtures. It is ERA's intention to encourage the use of innovative technologies.

Emergency Purposes (§ 503.39 and § 505.29)

In §§ 503.39 and 505.29 of the proposed regulations, we outlined the proposed eligibility, evidentiary, and reporting requirements applicable to the emergency exemption for powerplants and installations and defined an "emergency" situation that may arise in the case of each type of facility. The comments received on these proposals are discussed below.

Various comments took the position that a petitioner should not be required to demonstrate an inability to comply with the applicable prohibitions of the Act in connection with submission of a petition for an emergency exemption under these subsections. We agree with these comments and we have modified the proposed regulations accordingly. Specifically, § 503.39(a)(1) and § 505.29(a)(1) relating to inability to comply with the FUA prohibitions, have been deleted. Additionally, § 503.39(c) and §505.29(c) have been modified so that the evidence required in support of an emergency exemption petition does not include a demonstration of an alternate fuels search.

The comments also called our attention to the narrow definition of "emergency" as it applies to the emergency exemption for installations [§ 505.29(b)] and suggested that the definition should be broadened to include as emergency situations fuel supply interruptions, equipment failures, temporary environmental restrictions and peak demands. We agree in part with this comment and we have expanded the emergency definition in § 505.29(b) to include the first three suggested situations. Peak demand, however, is a normal recurring occurrence, usually associated with certain times of the year or phases of the production process. Therefore, we do not agree that a peak demand situation constitutes an emergency as such demands can be anticipated. Our consideration of an emergency exemption petition based on peak demand needs would not be consistent with the purposes of the Act.

The comments also suggested that the definition of emergency in § 505.39(b), applicable to exemption petitions for powerplants, should be modified to include situations requiring curtailments of less than 10 percent of non-interruptible electric supplies to industrial customers and to allow operation in spinning reserve. We agree with these comments and we have modified the emergency definition in § 503.39(b) accordingly.

A number of comments suggested that rental boilers be excluded from the prohibitions of the Act. We have decided that we cannot relieve rental boilers categorically from the FUA prohibitions and maintain consistency between the interim regulations and the purposes of the Act. However, we have provided for their use and they will be treated under the appropriate sections of the interim regulations depending upon whether their use is anticipated or unanticipated. If you must use a rental boiler for emergency purposes, you must, as the operator of the unit, comply with the provisions of the interim regulations implementing either Section 404(g) of the Act (Emergency use of natural gas or petroleum) or Section 103(a)(15) (definition of primary energy source). These provisions, covered in Subpart M of Part 501 of these interim regulations permit the immediate use of the rental boiler, require you to report the use to use, and in the case of Section 404(g), of the Act set a maximum period of operation at 24 months. If you need to use a rental boiler for anticipated purposes, you must, as the operator of the unit, file a petition for the appropriate exemption. In this case, the scheduled equipment outage or the public interest exemption may be applicable.

Further, we will not include rental boilers in the aggregation provisions of § 500.2(c) and (d) defining powerplants and installations if they operate subject to the exclusion in the definition of primary energy source, Section 404(g) of the Act (Emergency uses of natural gas or petroleum), or certain temporary public interest exemptions.

Reliability (§ 503.40)

Section 503.40 of the proposed regulations sets forth criteria to be used in granting a permanent exemption for a new powerplant to prevent impairment of reliability of service. A large number of comments were received in response to ERA's proposal as discussed below.

Many comments were directed toward the use of the loss of load probability (LOLP) approach to assess reliability of service. One commenter commended the choice of the LOLP approach but others were critical of it, pointing out that an LOLP calculation cannot provide an accurate measurement of system reliability because of the many variables present in each system which are impossible to calculate. Several comments suggested that ERA utilize a reserve margin test rather than LOLP.

ERA has decided not to eliminate the LOLP calculation and replace it with a reserve margin test because reserve margin fails to take account of factors important to reliability such as outage rates, size of units, and load patterns. ERA believes that LOLP as an analytic tool provides the best baseline evaluation of reliability and that it is a generally accepted approach. ERA has, however, added § 503.40(a)(4) to the regulations to allow a petitioner to argue, at a prepetition conference, that other methods more accurately reflect the local situation. If ERA concurs, a petitioner may use such alternative methods in lieu of the LOLP. With respect to factors which may affect reliability yet are not included in an LOLP calculation, ERA notes that both the proposed regulations and these regulations allow flexibility so that a petitioner may present such a case. For example, transmission constraints and leadtimes may require that LOLP be calculated for an area other than the electric region. Energy constraints such as low stream flows at hydroelectric facilities may also require modifications in the LOLP calculation. ERA will consider arguments on a case-by-case basis concerning such factors or other region-specific occurrences, and may, after discussion with the petitioner, allow the use of modified methods that account for them.

Several comments asked why ERA proposed to apply a different LOLP criterion depending on when the proposed plant is to begin operation.

ERA believes that making a commitment to oil or gas-fired generation more than six years in advance can be justified only if an extremely severe reliability problem is projected—hence, the one day in one year criterion. If a less severe problem is projected six years in advance, such a commitment should be delayed while alternate remedial measures are sought. If such measures fail, there will still be time to obtain an exemption and build a powerplant to prevent the LOLP from falling below one day in five years. Since the construction of new oil or gas-fired powerplants is a solution of last resort to a reliability problem, it may be tolerable to operate for a limited period at a somewhat lower—but still adequate—standard while more satisfactory solutions are being implemented. ERA believes that this approach is reasonable, particularly in light of the inherent uncertainty in forecasting future demand more than a few years in advance. ERA has, however, decided for these regulations to change the timing somewhat to allow a utility an additional year for the proposed powerplant to begin operation under each criterion.

A number of comments state that the proposed LOLP standard, which is as low as one day in one year in certain instances, might seriously jeopardize a utility's reliability of service. As noted above, this standard only applies if the proposed plant will not become operational within six years. Since it is ordinarily possible to build and have in operation an oil-fired powerplant within four years, the ERA criterion assures that adequate capacity can be brought online to prevent the LOLP from going below one day in five years.

Several commenters argue that Congress, in the Public Utilities Regulatory Policies Act (PURPA), instructed DOE to undertake an 18-month study of reliability standards, taking into account a long list of germane factors. They state that adoption of a uniform national standard before completion of that study would be premature and inconsistent with PURPA. The FUA only directs ERA to grant petitions for exemption on the basis of impairment of reliability and not to establish national reliability standards, as contemplated by PURPA. Thus, ERA believes that establishing minimum criteria for use in evaluating petitions for exemption due to impairment of reliability of service is not inconsistent with the purposes of PURPA. If better reliability criteria are developed during the course of the PURPA reliability study, ERA will consider their relevance to FUA exemption standards.

Several comments contend that reliability must be evaluated on a utility system basis since a utility builds additional capacity to meet its system demands and not the regional capacity demands. ERA believes that to achieve the maximum reasonable reduction in gas and oil consumption, it is imperative that planning and coordination be evaluated on a regional basis, not on the basis of a single, isolated system. Nevertheless, ERA will also consider evidence related to deficiencies of the petitioner's system.

A few comments asked why the proposed regulation requires that reliability information be reported for the first 12-month period of powerplant operation. They state that this requirement cannot be fulfilled with the presently available reliability assessment programs which only produce the information on a calendar-year basis. ERA agrees and has modified § 503.40(a)(2) to permit the LOLP calculation to be computed using any 12-month period that includes the date of initial operation of the proposed plant.

Several comments question ERA's predisposition in favor of combustion turbines and against other types of equipment such as combined cycle. They state that if ERA is genuinely interested in limiting oil consumption, it should prefer the use of more efficient equipment such as combined cycle. ERA has deleted reference to specific types of equipment. However, ERA points out that it has added a new section, § 503.40(c), (terms and conditions) which will be imposed on units which are granted this exemption. Operation of the powerplant under this discretionary exemption will be permitted only for the purpose of preventing an impairment of reliability of service. ERA, at the time it grants this exemption, will specify the "initial period of impairment" which will extend from the date of initial operation of the proposed powerplant until the earliest date that the LOLP will be less than one day in five years. Unless circumstances beyond a utility's control cause the LOLP to exceed one day in five years, either at the end of this period or at any subsequent time, the powerplant will not be permitted to burn oil or natural gas after the expiration of this initial period of impairment.

ERA has also added a new § 503.40(e) to make clear that a utility may apply for peakload exemption in addition to this exemption for the same unit. Both exemptions may be granted if the eligibility and evidence requirements of both exemptions are met.

A few comments stated that ERA should accept a state's evaluation of issues of reliability and need for power and should not duplicate the work of a state. ERA believes that power supply for an electric region is often not the exclusive concern of a single state. However, ERA may at its discretion consult with the appropriate state authority.

Permanent Exemption for Peakload Powerplants (§ 503.41)

In proposed § 503.41, we outlined the eligibility, evidence, and reporting requirements that we planned to use in implementing Section 212(g) of the Act, permanent exemption for peakload powerplants. Comments have been received on our proposals and, having been considered, are responded to below.

Most of the commenters said that the peakload exemption should be granted solely on the basis of certification and that the petitioner should not have to file a Fuels Decision Report nor supply information about the electrical region if the proposed plant was other than a combustion turbine.

ERA has dropped the requirement that a petitioner for this exemption file a Fuels Decision Report. Also the mixtures requirement with respect to this exemption has been dropped. However, ERA does require that a petitioner certify that the proposed powerplant will be operated solely as a peakload powerplant and to meet peakload demand for the life of the plant.

The conference report makes it clear that the exemption applies not only to hours of operation, but also to type of use, that is, for peakload purposes. In addition, the enforcement provisions for this exemption, Section 721(c) of the Act, relate to the necessity of using the plant to meet peakload demand. Accordingly, ERA is retaining in this regulation, in a modified form its request for certain information if the proposed plant is other than a combustion turbine. Combustion turbines are normally used to meet peakload demand and the high cost of using them at a higher capacity factor generally precludes use to meet intermediate load demand. Therefore, ERA will generally assume that if the proposed plant is a combustion turbine, the petitioner and ERA would probably agree on what constitutes peakload demand.

If, however, the proposed plant is to be other than a combustion turbine (a combined cycle or steam plant for example) ERA is requesting information on what constitutes peakload demand on the petitioner's system, the order of dispatching plants, and the projected use of the proposed plant. ERA notes that economic use of a combined cycle unit usually exceeds 1,500 hours per year and may, in fact, be 2,000 to 3,500 hours per year. ERA needs the additional information so that it will be able to ensure compliance with this exemption and so the petitioner will have fully described what it is that he is certifying to. ERA solicits comments on how peakload demand should be defined for the purpose of these regulations.

ERA has added in the interim regulations a new subpart (c) entitled, "Additional Information," which outlines information you must submit with your petition. Specifically, we are requiring you to attach to your submission all data required under § 502.11 (Petroleum and natural gas use) and § 502.12 (Conservation measures) of these interim regulations. The data called for under § 502.12 will describe any oil or natural gas conservation measures you have taken or intend to take if the exemption you request is granted. These two categories of data are required by us to enable us to determine what terms and conditions will be appropriate for incorporation into the exemption (if granted) under our authority in section 214(a) of the Act (implementing interim regulations § 503.12). In addition, you will be required under (c)(3) to submit all data required by § 502.13 (Environmental impacts analysis). The submission of this information is necessary to enable us to meet our responsibilities under the National Environmental Policy Act (NEPA).

The comments pointed out that, where the peakload exemption is requested for a natural gas-fired unit, we should not require the applicant to submit with his exemption petition a copy of his application and supporting documentation made to the Environmental Protection Agency (EPA) for an air quality certification. In order for us to comply with the terms of section 212(g)(2)(A) of FUA, we must at least require you to submit, with your peakload exemption request for a natural gas-fired powerplant, the air quality certification by the EPA Administrator or the Director of the appropriate State air pollution control agency which will meet the requirements of § 503.41(a)(2)(ii) of the interim regulations, and thus, section 212(g)(2)(A) of the Act. We have, however, deleted from the regulations, as originally proposed, the requirement for submission of a copy of the EPA application and supporting documents.

EPA's or the State air quality agency's certification must indicate that the use, by the exemption petitioner, of coal or other available alternate fuels as a primary energy source in a particular unit will cause or contribute to a concentration of a pollutant within an area or region in which the national ambient air quality standard for that pollutant is or will be exceeded. The conference report states that "It is important to stress that the EPA or State agency must consider whether other available alternate fuels could be used before making such a certification." S. Report No. 95-988, 95th Cong. 2nd Sess., 78 (1978).

It was pointed out in some of the comments that we should not make the determination of whether a peakload powerplant is needed in the petitioner's system; rather, the appropriate State should do this. We do not intend to make determinations regarding the need for peakload plants and do not view either our proposed or interim regulations as suggesting or providing that we do so.

A number of suggestions made by commenters have been adopted in these regulations. These include the following: The reporting requirement is now in terms of "maximum number of kilowatt hours of permitted generation" rather than "maximum number of hours of permitted operation" as previously proposed. ERA will accept a certification from a duly authorized officer and not require it from the chief executive officer.

ERA received comments suggesting that the certification on peakload use should not be for the life of the powerplant since statutory or regulatory changes may intervene and other exemptions may later be granted. The peakload exemption, however, is a permanent exemption for the life of the powerplant. As clearly indicated in the conference report, the certification runs for the life of the powerplant.

Various comments recommended that we base the peakload exemption on "planned" use of the powerplant of 1,500 hours or less, but once we grant the exemption, the peakload unit should be free to provide emergency power as required by the operator's needs, regardless of the number of hours. It was suggested that, for us to do otherwise, we would be encouraging the construction of increased peaking capacity. We do not believe that the peakload exemption should be altered to account for emergencies which require operation beyond the terms of the peakload exemption. The Act and the interim regulations contain a separate emergency exemption. Further, section 721(c) of the Act provides for the operation of a powerplant with a peakload exemption in excess of 1,500 hours without penalty under certain circumstances involving peakload demand and unit system outages.

Intermediate Load Powerplants (§ 503.42)

The purpose of the intermediate load exemption is to encourage retirement of old units and investment in new, efficient oil burning units, where the new unit, even though it could not get an "applicable environmental standards" exemption if it burned any available alternate fuel, would cause or contribute to concentrations of air pollutants in excess of ambient air quality standards. The intermediate load exemption recognizes the social cost of burning oil or gas in situations where there would otherwise be a social cost from burning an alternate fuel, which would result in a contribution to pollutants in excess of ambient standards (though short of a violation of environmental requirements). The intermediate load exemption allows such new investment in such environmental circumstances only when the investment could not otherwise occur; that is, where the facility could not obtain at the proposed or at any reasonable alternate site a general exemption which would enable it to burn oil or gas. It thus allows such investment even though the petitioner could burn coal or other available alternate fuel at the proposed or some alternate site.

ERA is concerned, in situations where the generating capacity that you plan to replace consists of older units which may be approaching retirement, that despite your substitution of more efficient replacement capacity, the disparity in relative durations of use might result in long-term increases in oil use. ERA, therefore, invites your comments on an alternative approach whereby the phrase "equivalent capacity" in Section 212(b)(1)(B) of the Act would be interpreted as requiring that the "expected capacity-years" (design capacity multiplied by expected useful life) of your new powerplant would have to be offset by at least an equivalent number of "capacity years of early retirement" of the powerplants it will replace. ERA would set the nominal retirement age at 35 years. If you retired a 100-MW powerplant at 30 years, you would, therefore, obtain a credit to be applied against your new replacement capacity of "500-MW years of early retirement." Your construction of a single new powerplant, in this case, might result in a sequence of early retirements of older and less efficient powerplants.

In addition to this proposal, ERA has addressed the foregoing concept by adding to this Interim Rule a section concerning terms and conditions. ERA intends to exercise its authority under Section 214(a) of the Act to attach terms and conditions to the grant of any intermediate load exemption to assure that the construction and operation of your new powerplant will not result in an increased consumption of petroleum in your system. In general, the grant of this exemption for your unit would be conditioned so that a decrease in the petroleum consumption of your system would result. Appropriate terms and conditions will, however, be determined on a case-by-case basis.

ERA received several comments on its proposed rule for the intermediate load exemption, suggesting that ERA's requirement that the units to be replaced cease operating within 30 days of commencement of operation of your new powerplant is contrary to the intent of the Act. ERA believes that this requirement is fully in accord with the provisions of FUA. The Act clearly requires the replacement of capacity, and not simply energy. This requires that at least as much capacity be removed from the system as is added in the form of the new unit. ERA, however, has permitted a 30-day delay for the shutdown of the units to be replaced in order to provide flexibility during the initial period of operation.

Several comments noted that ERA had no authority under FUA to require that the units to be replaced be coal capable. ERA has deleted this requirement in this Interim Rule.

One comment suggested that ERA's proposal to retain the option to periodically review your intermediate load exemption and to retain authority to terminate your exemption should suitable synthetic fuel become available, should be eliminated. ERA cites Section 212(h)(2) of the Act as the basis for its authority, which reads "The Secretary shall from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption when he finds that there is available a supply of synthetic fuel suitable for use as a primary energy source by such powerplant." ERA intends fully to implement this provision.

The Use of Petroleum (§ 505.16)

ERA proposed in § 505.16 to permit certain MFBI's to file for exemptions, pursuant to Section 212.4 of the Act under certain conditions on an expedited basis. Consistent with the Act, this exemption was proposed to remain in effect only until regulations upon which action could be taken were issued.

In publishing these regulations, ERA has provided adequate means for processing exemption requests through the mixtures exemption (§ 505.25) and temporary exemptions, and sees no need for continuing § 505.16. That paragraph has therefore been excluded from the regulations.

Product/Process (§ 505.30)

ERA proposed that the product/process exemption be applied only to certain non-boiler categories, and since these categories are not the subject of this rulemaking, we are not promulgating rules for this provision at this time.

ERA received comments that installations should be permitted to apply for this exemption since Section 202(i)(2) specifically states that, in order to apply for this exemption, a petitioner must demonstrate that substitution of steam is not technically feasible. Since this rulemaking only covers boiler installations, and boilers generate steam, substitution of steam is always technically feasible for a boiler unit. Since a petitioner must demonstrate that substitution of steam is not technically feasible and boilers generate steam, ERA believes that any new boilers could not qualify for the exemption on the basis of product/process limitations.

Therefore, ERA has decided not to change the proposed regulation.

Permanent Exemption for Scheduled Equipment Outages (§ 505.31)

In proposed § 505.31, we outlined the eligibility, evidence, and reporting requirements that we planned to use in implementing Section 212(j) of the Act involving the permanent exemption for scheduled equipment outages for installations. Comments have been received on our proposals and, having been considered, are responded to below.

Most of the comments addressed the burden of requiring a petitioner to demonstrate that he is unable to comply with the applicable prohibitions of the Act. It was urged that where small amounts of oil or natural gas would be consumed, ERA provide a virtually automatic grant of exemption.

Upon consideration of the comments, ERA has modified the regulation to reduce the burden on petitioners, yet to retain showings where ERA believes it may be feasible to burn an alternate fuel. First, ERA requires a petitioner to demonstrate that his routine maintenance schedule does not permit or could not be adjusted to permit continuing production or other activity carried on at the site unless ERA grants this exemption. Maintenance is often accomplished with either rotating use of units or shutting down all units at the same time. ERA, therefore, believes that there will often be situations in which an additional unit that is oil or gas fired would not be required to accomplish routine maintenance.

However, in those instances where an additional unit that is oil or gas fired is required, ERA will reduce the evidentiary requirements if the scheduled outages (and thereby the scheduled use) of the proposed unit is 21 days per year or less. In such instances, an examination of the feasibility of using an alternate fuel will not be required. But if the scheduled outages exceed 21 days per year, ERA will require for this discretionary exemption an alternate fuels search. It may be quite feasible to use an alternate fuel in this circumstance, and if so, such use would be consistent with the purposes of the Act.

Some comments suggested that the proposed regulations implied that a boiler would not be allowed to operate on oil or natural gas during scheduled outages if it were normally operated on an alternate fuel at other times. The proposed regulations do not specifically preclude the use of oil or natural gas in an alternate fuel-capable boiler during scheduled outages; however, as already discussed, the burden of proof is on the petitioner for the exemption to demonstrate why the use of an alternate fuel would not satisfy its output requirements and, thus, why the use of oil or natural gas will be required during the outage.

Comments also suggested that a boiler should be allowed to operate in the event of both emergencies and scheduled outages under one exemption grant without having the operator apply for both types of exemptions. These exemptions, however, relate to two very different sets of circumstances not necessarily related to each other and requiring evaluation against different criteria before a decision can be made on the request. Accordingly, we are not adopting the position suggested by the comments. However, as a petitioner, you may request both a scheduled outage exemption and an emergency exemption for the same unit by means of a single petition. You will be required to meet the eligibility and evidence requirements for each of the exemptions. If you are granted both exemptions for the operation of your unit, you must comply with the separate reporting requirements applicable to each exemption.

Fuel Classification—Part 507

In Part 507 of the proposed regulations published in the Federal Register on January 29, 1979 (44 FR 5860), we defined natural gas and petroleum as we use those terms in implementing the alternate fuels program under the Act. As published at that time, Part 507 was a refinement of § 500.2 (d) and (e) of our orginally-proposed regulations defining those two fuels (43 FR 53987, November 17, 1978). We have received comments on both our November 17, 1978, and January 29, 1979, proposals and are responding to them below.

Natural Gas Definition (§ 507.2(a) and § 507.3)

In our November 17, 1978, definition of natural gas we proposed that natural gas produced from wells with a maximum efficient-production rate (MEPR) of less than 250 million Btu's per day which were acquired on or after July 18, 1977, be classified as natural gas rather than as an alternate fuel. After further consideration of FUA's legislative history, we dropped the retroactive provision from the proposed natural gas definition published on January 29, 1979. The comments received on this issue favored our modification and recommended that it be retained in the final regulations. In accordance with the Act, and under the definition now contained in these interim regulations, we will not consider as natural gas any gas produced by the user from any well with an MEPR of less than 250 million Btu's per day regardless of the date of acquisition of such well.

In the January 29, 1979 proposed rules, we submitted proposed criteria for determining "commercial unmarketability" requiring the petitioner to demonstrate that he could not obtain a bona fide offer from an interstate, intrastate, or local gas distribution company for such gas and that it be transported directly from the well to his facility. Comments were received which contended that gas commingled in a pipeline serving other customers should not be automatically designated commercially marketable. Other comments maintained that we had not adequately specified the criteria for determining commercial unmarketability by reason of "quality." We have decided that the criteria published on January 29, 1979 (44 FR 5860) in § 507.3(b), require further development prior to promulgation of interim regulations. We have therefore reserved under § 507.3 a subsection with respect to commercial unmarketability and will promulgate an interim rule after further consideration of the comments and other technical, financial and marketing information available to us.

Much attention was given by ERA and others to excluding from the definition of "natural gas" certain gases designated by the Natural Gas Policy Act (NGPA) in § 107(c) as "high-cost natural gases." We believe that § 107(c) of the NGPA constitutes a good basis for designating gases which should be excluded from the definition of natural gas and we have substantially accepted this proposal. We will recognize as "commercially unmarketable" the natural gases from geopressured brine and Devonian shale where these gases are produced from wells spudded (i.e., for which surface drilling began) before 1990 and all occluded methane produced from coal seams when these gases are gases within the definition of section 107(c) of NGPA. Furthermore, we will presumptively recognize as "commercially unmarketable" those high-cost natural gases recognized by the Federal Energy Regulatory Commission (FERC) under section 107(c)(5) of NGPA as being produced under "such other conditions as the Commission determines to present extraordinary risk or costs," if produced from wells spudded prior to 1990. However, we reserve the right to review any FERC designations of gases under section 107(c)(5) on our initiative and to make our own determination regarding their commercial marketability. We will not recognize, on a generic basis, the so-called "deep gas" produced from completion locations at a depth of more than 15,000 feet as categorically "commercially unmarketable" although section 107(c)(1) of NGPA classifies it as a "high-cost" natural gas since most of this gas would be of pipeline quality. We will, however, review any claims asserted by a user that these and/or any other gases are "commercially unmarketable" by reason of their quantity, quality, or distance from existing transportation networks on a case-by-case basis. [§ 507.3(b).]

Our reservation of authority to depart from FERC designations under Section 107(c)(5) and our rejection of "deep gas" as commercially unmarketable require a comparison of the purposes of FUA and those of the NGPA. The NGPA has among its primary objectives the development of high-cost natural gas resources. For its part, FUA seeks to a large extent to reserve these and other more conventional sources of natural gas for high-priority users, such as the residential and small commercial sectors, by prohibiting their use by powerplants and installations. As a result, while we substantially accept the NGPA designations, we will continue to assess future classifications of gas under the NGPA in light of the purposes of FUA.

Many of the comments cited specific types of gases or gases produced by special and generally costly methods as appropriate fuels for exclusion from the natural gas definition and inclusion in the alternate fuels definition. Natural gas produced by secondary and tertiary methods and gas from "difficult to produce formations" are particularly suggested for exclusion. Natural gas from methane hydrate was also proposed for exclusion. One comment also recommended the exclusion from the natural gas definition of gases attributable to the user's working interest in a new well if the well (a) has an MEPR of 150 million Btu's per day or less, (b) is drilled on an offshore lease on the Outer Continental Shelf in which the water depth is in excess of 500 feet, and (c) the geological formation of which is deeper than 7,000 feet beneath the surface of the earth with an effective permeability of .05 millidarcies or less. This recommendation was made on the basis that, due to the high-risk, high-capital nature of this type of investment, the user-owners would not be able to afford to invest in 100% of the working interest in such wells. By excluding such gases from our natural gas definition, it is asserted that we would be encouraging resource development for the benefit of the public.

We are not convinced, for purposes of this Interim Rule, that we should exclude by rule the above-mentioned gases from the definition of "natural gas" under FUA. In the case of gas from secondary and tertiary recovery, we neither believe that gas obtained from such methods of recovery are commercially unmarketable nor that, under the language of the statute, we are free to designate the resulting production of such methods as something other than "natural gas" for use in implementing FUA. As for gas from "difficult to produce formations," we have concluded that it would be impractical and probably impossible to determine satisfactory generic criteria to define this term for this Interim Rule and to make exclusions from the natural gas definition by rule based on reasonable criteria. In regard to all of the gases mentioned in the paragraph above as well as any other gases not specifically excluded from the definition of "natural gas" under these Interim Rules, three possibilities exist. First, if FERC were to designate one of these gases as a "high-cost natural gas" under Section 107(c)(5) of NGPA, we will accord it presumptive recognition as a commercially unmarketable gas, subject to our reserved right to review. Second, a user may claim, under § 507.3(b) of this Interim Rule, that his gas is commercially unmarketable and ERA will examine and determine the nature of the gas on a case-by-case basis under general criteria which we will promulgate in the near future. Finally, in the absence of either of these actions, we will treat such gases as being within the natural gas definition of this Interim Rule.

The comments in some instances recommended that synthetic gas derived from coal be excluded from our definition of natural gas. We note that the definition of coal in Section 103(a)(5) of FUA includes any fuel derivative of coal. Furthermore, low Btu synthetic gas derived from coal is expressly excluded from the natural gas definition by Section 103(a)(3)(B)(iv) of the Act, while all synthetic gas derived from alternate fuels and mixed with natural gas may also be treated as an alternate fuel upon certification (with supporting documentation) to us of the existence of the circumstances outlined in Section 103(b) of the Act (Special Rules Relating to Definitions of Natural Gas and Alternate Fuel).

The comments frequently recommended that, in order to provide users with a degree of certainty, we should recognize gas from a well once classified as commercially unmarketable to be permanently commercially unmarketable and, as such, not at all subject to the prohibitions of FUA. We concur with this view insofar as the suggested permanent designation would be an incentive to the production of certain currently unmarketable "high-cost gases," for example, coal seam and geopressurized methanes. Consequently, we will permanently exclude from the definition of "natural gas" all gases expressly designated in this Interim Rule as "high-cost gas" from wells spudded prior to 1990 and occluded gas from coal seams. In unusual cases (e.g. remote areas) where conventional natural gas wells have been drilled but there is no economically available pipeline system (or other solution) for the marketing of the produced gas to the general gas market, we will permit its consumption by a powerplant or installation by recognizing it as commercially unmarketable. However, if and when the gas does become marketable to the general public, we will classify it as "natural gas" and thus subject to the prohibitions and priorities of FUA for the benefit of the nation's higher-priority users.

Certain comments took the position that Congress did not intend that we include other energy resources produced from a well, for example crude oil, in computing the MEPR of a natural gas well; but rather that we were to consider only the natural gas production in order to encourage the development of such natural gas by "self-help" users who would otherwise have to purchase the gas they use. We find, however, that the legislation in Section 103(a)(3)(B)(ii) addresses the term "maximum efficient-production rate" only in terms of Btu's from the well itself and does not confine the product to be considered in connection with the natural gas definition to any specific energy resource. We agree that the intent of this provision is to promote the development of "self-help" wells, the production from which can be used by the producer in lieu of purchased natural gas. However, as the MEPR (250 million Btu's per day) established in the Act as the upper limit to production of a well whose gas is excluded from the natural gas definition is considerably higher than the upper limits generally recognized as defining small or "stripper" wells, we do not believe that our consideration of all the fuel resources produced from the well in the MEPR will discourage such "self-help" efforts.

Petroleum Definition—§ 507.2(b) and § 507.4

In our November 17, 1978 Federal Register notice (43 FR 53976), we requested comments on the proposal that we exclude from the petroleum definition, waste by-products from a refinery operation if the refinery user could demonstrate that they were both commercially unmarketable and could be used elsewhere in the plant to replace natural gas or petroleum. In response to our proposal, the National Petroleum Refiners Association suggested that we categorize all waste gases, liquids, and solids from refinery or other petrochemical industrial operations as "commercially unmarketable" because consumption within the refinery or industrial site constitutes the most efficient disposition of such energy sources. We called for comments on this particular proposal on January 29, 1979 (44 FR 5814).

After consideration of all the comments received, we have decided to modify our definition of "waste by-product" and our criteria for the determination of commercial unmarketability of a refinery waste by-product. These criteria appear in the interim regulations in § 507.4(e) and are described below.

For purposes of this subsection, a refinery waste by-product is a by-product that is unavoidably produced as the result of primary refinery processes. We will look not only at the by-product itself, but also at the ability of the by-product to be further processed or re-processed so as (1) to extract from it a component such as propane or butane that is of commercial quality or (2) to combine it with another waste by-product or other product to produce a blend of commercial quality.

Under the modifications to the "quality" criteria (§ 507.4(e)(1)) we now will designate as commercially unmarketable a refinery waste by-product (1) for which there are no expectations for use outside a refinery operation; (2) which is not a recognized item of commerce in a national market or in the regional or local area in which the facility is located; or (3) for which the cost of processing, storing, and distributing would not be covered by reasonably expected revenues from its sale.

Under the modifications to the "quantity" criteria (§ 507.4(e)(2)), we will designate as "commercially unmarketable" a refinery waste byproduct the quantities of which (1) are so insufficient or produced so sporadically as not to constitute an adequate and reliable supply to a potential buyer other than the producer; (2) are significantly less than those quantities normally sold or traded in the appropriate market, or (3) would require a cost of aggregating into commercial quantities and distributing that would not be covered by reasonably expected revenues from its sale.

Certain comments received suggested that we specifically identify the waste by-products which we consider to be commercially unmarketable and include in such identification heavy residual oils, oils with a viscosity greater than 1000, catalytic cracking residual fuel, vacuum-flashed and solvent-extracted pitches, refinery waste by-products that do not meet commercial specifications, waste by-products not suited for use outside the plant, and waste by-products whose upgrading to commercial quality is too expensive due to special handling requirements necessitated by their toxicity or carcinogenicity. Whatever the ultimate classification of these fuels, we believe it preferrable to take a case-by-case approach in evaluating and classifying these fuels using the criteria in § 507.4 (described above). This case-by-case approach is justified on the basis that a waste by-product is not commercially unmarketable in and of itself. Rather, it becomes so by virtue of the nature of the refinery process in which it is generated and the market (or lack thereof) that exists for it. Moreover, product-specific exclusions may change over time and would require elaborate technical definitions and descriptions. Furthermore, we believe that we will have adequate time for case-by-case assessments without prejudice or inconvenience to anyone as most of the refineries that we will be reviewing under the Act are "existing" facilities, subject to Title III of FUA. We are statutorily required to initiate proceedings leading to a prohibition against the use of these waste by-products by such facilities on, for the most part, a case-by-case basis. Thus, an existing refinery may continue with the unrestricted burning of its waste by-products as an energy source until it is prohibited from doing so as a result of our action. At the same time, the refineries which are "new" under FUA and, hence subject to the statutory prohibitions against the consumption of petroleum, will be so few that we expect to be able to deal both with the "new" and "existing" facilities using waste by-products in a timely fashion on a case-by-case basis.

As noted previously, the opinion was expressed that consumption of waste by-products within the refinery producing them is the most efficient use of these fuels and should, accordingly, be permitted. We certainly support the general principle of economic efficiency of fuels, wherever it is possible. Nonetheless, the primary emphasis of FUA is to promote the substitution of domestic alternate fuels for use in the place of natural gas and petroleum. Therefore, where natural gas and petroleum can be diverted to higher priority users by redistribution of available fuel sources in accordance with the provisions of FUA, we will mandate the necessary redistribution.

Some of the commenters proposed that we should either designate the waste by-products of new refineries "unmarketable" *per se* or not require any new refinery to market any greater percentage of its by-products than an existing refinery located in close proximity to it. We reject the first part of this proposal on the grounds that there are no factors which make the waste by-products of a new refinery inherently unmarketable. We also reject the second part of the proposal as unreasonable under the Act since the Act does not differentiate in its classification of fuels between those consumed in "new" refineries and those consumed in "existing" refineries.

One commenter also proposed that Alaska be excluded from being an area in which refinery by-products are marketable. We cannot accept this suggestion as we are unaware of any characteristics pertaining to Alaska that would support the issuance of a blanket exclusionary rule of this type. Rather, we would expect any special characteristics pertaining to commercial marketability of waste by-products produced by Alaska refineries to be site specific and appropriately assessible only in a case-by-case analysis. We note, in response to the commenter, that existing powerplants in Alaska were exempted from Section 301 by FUA's terms; however, there is no evidence in the legislation indicating that any other Alaskan facilities should be excluded.

Some of the commenters asked that we designate refinery waste by-products as "commercially unmarketable" in the rules and that this designation be permanent regardless of any increased demands for such products generated by the fact of their commercially unmarketable classification and the prohibitions of FUA. The commenter believed that the commercially unmarketable designation should not be subject to future change as the initial classification was seen as a potential incentive to refiners to increase their heavy crude operations in order to bring about the concomitant increase in the refinery waste by-product. If this increase should happen, so the argument goes, markets for these by-products might open up because of demand by powerplants and installations that would otherwise be forbidden by FUA to burn petroleum.

If we were to accept this position, we would be doing substantial violence to the intent of FUA, the primary purpose of which is to increase use of alternate fuels while, in the case of petroleum, to reduce its use and its importation. Obviously, the action urged would encourage the use of petroleum in order to produce petroleum-derived products to be burned in boilers or other combustors. Such a result is directly contrary to the purposes of FUA. This "commercially unmarketable" exclusion was not intended to encourage the development of petroleum-derived products which happen to be only marginally commercially marketable. We further note that, for a refiner to increase its run of stills to heavier oils in order to increase the amount of the by-product and develop a market for such by-product, the result may be that he produces less lighter products, which we do not believe is desirable given the economics of production of both fuels.

The comments noted that in establishing the economic test for commercial unmarketability of a refinery by-product, we limited our criterion to whether the producer can obtain a price for the fuel which merely meets the costs of production and distribution. It was recommended that the criterion should be modified to take into account the cost of any necessary reprocessing of the by-product as well as a recompensation factor to cover the producer for the loss of the base in-plant fuel value. We intend that only the cost of any necessary reprocessing of the by-products to bring them up to commercial quality as well as storage and distribution costs be included in the cost of producing the fuels as we believe that the fixed production cost for an unavoidable by-product is properly viewed as zero. The interim regulations reflect this view (§ 507.4(e)). We will not, however, consider any recompensation of the producer for the loss of the waste by-product fuel due to its classification as petroleum.

Some of the comments raised the issue of whether a refinery waste by-product could not be commercially unmarketable by reason of quantity due to an overabundance of production, rather than insufficient or sporadic production. Heavy residual fuel oil refined from California and Alaskan North Slope crude oil in West Coast refineries was cited in the comments as an example of such an over-abundant waste by-product. In our discussion of the classification of heavy crude oils under the alternate fuels definition section of this Preamble, we explained why the heavy crudes must be considered "petroleum" within the FUA definition. Consequently, we are considering the heavy residual waste by-products coming from their refining to be petroleum. As for commercial unmarketability, the fact that there is a temporary excess of supply is perfectly consistent with commercial marketability. These are, in fact, well established items of commerce. No claims are made that these waste by-products are not of commercial quality or that there is no regular market for them. Rather, it is recognized that there is a market for these waste by-products, but that they are periodically unsalable due to a temporary excess. We do not believe that, in carrying out the FUA program, we should attempt to alleviate any temporary market situation by excluding such petroleum waste by-products from the petroleum definition (and thereby making them alternate fuels).

III. Procedural matters

A regulatory analysis of this interim rule set forth below, as contemplated by Executive Order No. 12044, is contained within the draft regulatory analysis of the regulation regarding new facilities proposed on November 9, 1978, 43 FR 53974. A final Environmental Impact Statement (FEIS) has been prepared pursuant to the National Environmental Policy Act (NEPA). Both the draft regulatory analysis and the FEIS may be obtained from ERA, 2000 M St., N.W., Room B110, Washington, D.C. 20461, (202) 634-2170.

This interim rule and FUA become effective on May 8, 1979. ERA believes that good cause exists to make this interim rule immediately effective in order that an exemption petitioner may file his petition.

These revised rules have been submitted to the Office of Management and Budget (OMB) for clearance under the provisions of the Federal Reports Act. Any compliance with the data collection provisions of these interim rules may require revisions of additions as a result of OMB's action.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et. seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); E.O. 12009, 42 FR 4267)

In consideration of the foregoing, Parts 502, 503, 505, and 507, Subchapter E, "Alternate Fuels" of Chapter II, Title 10 of the Code of Federal Regulations as proposed on November 17, 1978 and January 29, 1979 are hereby revised and adopted effective May 8, 1979.

Issued in Washington, D.C., May 8, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

10 CFR Chapter II, Subchapter E, Parts 502, 503, 505 and 507 are hereby adopted as an interim rule.

Subchapter E—Alternate Fuels

PART 500—POLICY AND DEFINITIONS

Sec.

500.1 [Reserved]

500.2 Definitions—[Issued May 8, 1979 (44 FR 28538, May 15, 1979)]

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

[Issued May 8, 1979 (44 FR 28538, May 15, 1979)]

PART 502—FUELS DECISION REPORT

Sec.

Authority: (Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); E.O. 12009, 42 FR 4267).

PART 502—FUELS DECISION REPORT

§ 502.1 Purpose and scope.

(a) If you petition for a temporary or permanent exemption from the prohibitions of this Title, you must, except for the exception specified in § 502.1(d), submit as part of your petition a Fuels Decision Report. The purpose of the Fuels Decision Report is to demonstrate your eligibility for one or more exemptions and to provide ERA with additional information necessary to carry out the purposes of the Fuel Use Act (FUA) and the National Environmental Policy Act (NEPA).

(b) Where the exemptions you are seeking turn on the economic, technical or legal infeasibility of burning an alternate fuel, your Fuels Decision Report should demonstrate your eligibility for one or more exemptions, including your good faith efforts to avoid using petroleum or natural gas. In such instances, your Fuels Decision Report provides you the opportunity to demonstrate the ingenuity and professional judgment you used in attempting to find an energy source other than petroleum or natural gas which can serve your needs. The Fuels Decision Report describes the preliminary design analysis performed to make your fuels decision.

(c) We have not stipulated which alternate fuels you must consider for those exemptions which require alternate fuel examination.[9] Selection of fuels must reflect your needs and supply opportunities, but you must address all alternate fuels which reasonably warrant your in-depth consideration. The prepetition conference described in § 502.2(a) provides the opportunity to discuss the scope and kinds of fuels you must address in your Fuels Decision Report. The kinds of fuel you might consider could range from coal to any fuel (or mixture, if appropriate) that is not petroleum or natural gas. We do require that you describe not only the fuels you analyzed in-depth, but those you rejected, and the reasons you chose not to consider them further. Your Fuels Decision Report reflects a decision tree, in which a variety of alternatives are examined, but only a few are analyzed in depth.

(d) When you are requesting an exemption that requires a fuel search, your Fuels Decision Report must demonstrate that you rigorously explored and objectively evaluated all reasonable alternatives to oil or gas. It must clearly and concisely describe the process and methodology you used to search for, analyze, and evaluate each fuel you closely examined including documentation of feasibility reports, experts and sources used. The evidence you provide in support of your evaluation of each fuel considered in depth must be sufficient to demonstrate that you qualify for one or more exemptions, and must meet the eligibility and evidentiary requirements pertaining to the appropriate specific exemptions covered by this Title.

(e) The kinds of information which must be included in your Fuels Decision Report will differ depending on the kind of exemption or the type of unit under consideration. The information required is outlined in the evidentiary requirements of Parts 503, 504, 505 and 506 of these regulations. The following chart gives a brief indication of the substantive Fuels Decision Report (FDR) requirement for each exemption. No fuel search is required for category 1, 2, 3 and 5 exemptions. An alternate fuel search is required for category 4 exemptions.

Category 1:

(a) Mandatory permanent exemptions which primarily involve certification requirements:

(1) Peakload (for new powerplants).

(2) Emergency purposes.[10]

(3) Retirement (existing units).

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[9] We plan to initiate rulemaking proceedings to identify and define alternate fuels which should generally be considered, including new technologies as they become available. Case-by-case definition of appropriate alternate fuels would be an appropriate subject for prepetition conferences under § 502.2(a) of these regulations.

[10] Pursuant to the Act, Part 501, Subpart M, provides for your actions in emergency when you have not previously obtained an emergency exemption.

(b) No Fuels Decision Report is required for these exemptions, although you must submit adequate information in your petition to demonstrate you would be eligible for an exemption and to meet other applicable requirements.

Category 2:

(a) Temporary exemptions to statutory prohibitions and to final prohibition orders and rules (except retirement exemption).

(b) These exemptions require the following chapters of the Fuels Decision Report:

(1) § 502.4 Introduction.
(2) § 502.7 Evidence Required for Exemption Requested.
(3) § 502.12 Conservation Measures.

Category 3:

(a) Permanent end-use exemptions to statutory prohibitions and to final prohibition orders and rules:

(1) Mixtures.
(2) Cogeneration.
(3) Scheduled equipment outages (less than 21 days per year).
(4) Reliability of Service (for new powerplants).
(5) Product or process requirements.
(6) Peakload (for existing powerplants).
(7) Powerplants with less than 250 MMBtu capacity.
(8) Use of LNG.
(9) International pipelines.

(b) These exemptions require the following chapters of the Fuel Decision Report:

(1) § 502.4 Introduction.
(2) § 502.7 Evidence Required for Exemption Requested.
(3) § 502.8 Mixtures General Requirement (required by statute except mixtures, peakload for existing powerplants, use of LNG and international pipelines exemptions).
(4) § 502.9 Alternate Supply of Electric Power (required by statute for new powerplants except cogeneration exemption).
(5) § 502.10 Fluidized Bed Combustion General Requirement (required by statute except mixtures, peakload for existing powerplants, use of LNG, and international pipelines exemptions) (applicable only if ERA has made finding).
(6) § 502.11 Petroleum and Natural Gas Consumption (except cogeneration exemption).
(7) § 502.12 Conservation Measures.
(8) § 502.13 Environmental Impact Analysis.

Category 4:

(a) Permanent general exemptions and certain discretionary exemptions to statutory prohibitions and to final prohibition orders and rules:

(1) Lack of alternate fuel for first 10 years of useful life.
(2) Lack of alternate fuel at a cost which does not substantially exceed.
(3) Site limitations.
(4) Environmental requirements.
(5) Lack of adequate capital.
(6) State or local requirements.
(7) Intermediate load.
(8) Scheduled equipment outages (more than 21 days per year).

(b) These exemptions require the following chapters of the Fuels Decision Report:

(1) § 502.4 Introduction.
(2) § 502.5 Fuels Considered.
(3) § 502.6 Alternative Sites Considered (for new powerplant exemptions except scheduled equipment outages).
(4) § 502.7 Evidence Required for Exemption Requested (one chapter for each exemption requested and, where applicable, for each exemption requested for an alternative site).
(5) § 502.8 Mixtures General Requirement (required by statute).
(6) § 502.9 Alternate Supply of Electric Power (required by statute for new powerplant exemptions plus state or local requirements and intermediate load exemptions for existing powerplants).
(7) § 502.10 Fluidized Bed Combustion General Requirement (required by statute).
(8) § 502.11 Petroleum and Natural Gas Consumption.
(9) § 502.12 Conservation Measures.
(10) § 502.13 Environmental Impact Analysis.

Category 5:

(a) Temporary or permanent exemption to a proposed prohibition order or rule:

(b) No Fuels Decision Report is required although you must submit adequate information to demonstrate you would be eligible for an exemption if the order or rule were finalized.

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§ 502.2 General Instructions.

(a) *Prepetition conference.* (1) You may request an informal prepetition conference with ERA to clarify any questions you may have concerning your request for exemption, to discuss whether your Fuels Decision Report must contain all of the chapters and information required by this Part, or, when a fuel search is required, to consider which fuels in the opinion of the ERA staff warrant in-depth examination. Such a conference should be requested in accordance with § 501.2 of these regulations. We retain the right to waive some of the requirements for the contents of the Fuels Decision Report if we determine that the purposes of the Act are best achieved by doing so. The grounds upon which we might consider waiving certain requirements could include:

(i) The burden of meeting such requirements could be excessive for a small firm or for a new firm;

(ii) The burden of meeting such requirements could be excessive for a petitioner requesting a certain type of exemption; or

(iii) Other reasons as determined by ERA.

(2) After the prepetition conference, we will prepare a written memorandum of record identifying any requirements of the Fuels Decision Report which we agree to waive. We will mail a copy of the memorandum of record to you within 30 days of the prepetition conference. If you file a petition for exemption, you must include a copy of the memorandum of record in your Fuels Decision Report. We also reserve the right to request any additional information that may be necessary once you have filed your petition.

(b) *Writing and organization.* Prepare your Fuels Decision Report as follows:

(1) You should discuss impacts in proportion to their significance. There should only be a brief discussion of minor issues.

(2) Your Fuels Decision Report should be concise, and be no longer than necessary to comply with these regulations. It should express the results of professional engineering analysis. It should also convey those results in language that is understandable to the serious lay public.

(c) *Incorporation by reference.* You may incorporate into your Fuels Decision Report by reference when to do so will cut down on the bulk without impeding agency and public review of the Report. You must cite the incorporated material in the Report and briefly describe its content. Whenever you are citing material contained in the appropriate forms you have filed, you must indicate the name of the form, its date, and the page and section number that contains the material cited. You may not incorporate any material by reference unless it is submitted with your petition or has been submitted previously to DOE. If it has been previously submitted to DOE, you must identify the office to which it was submitted. You may not incorporate by reference any material based on proprietary data which is itself not available for review and comment.

(d) *Relationship between Fuels Decision Report and forms.* In most cases, the Fuels Decision Report and the appropriate forms will constitute your petition for exemption. Your Fuels Decision Report will contain the analysis, evidence, and documentation required to support your request for exemption. The forms will contain summary data and quantitative information which will be used to screen your petition for eligibility, adequacy and accuracy, and to ensure that you provide the detailed information needed for analysis. The forms you submit must reference the appropriate chapters and pages in your Fuels Decision Report where the explanation, justification, and back-up material supporting the information contained in the forms can be found. You may also reference the forms in your Fuels Decision Report, and incorporate them in your Report if appropriate.

§ 502.3 Contents.

Your Fuels Decision Report must contain:

(a) *Cover Sheet.* (1) The name of the petitioner.

(2) The name and location of the unit for which an exemption is being requested.

(3) The specific exemption(s) being requested.

(4) The name, address, and telephone number of the person who can supply further information.

The appropriate general form may be substituted for the cover sheet.

(b) *Table of contents.* Include a table of contents representing the contents as follows. Only include those chapters which are applicable to your exemption request(s).

Chapters

(i) Cover sheet (or general form).

(1) Introduction.

(2) Fuels Considered.

(3) Alternative Sites Considered.

(4) Evidence Required for Exemption(s) Requested (If more than one exemption is requested, subchapters could be included).

(5) Mixtures General Requirement.

(6) Alternate Source of Power General Requirement.

(7) Fluidized Bed Combustion General Requirement.

(8) Petroleum and Natural Gas Consumption.

(9) Conservation Measures.

(10) Environmental Impact Analysis.

(A-1) List of Preparers and Certifications.

(A-2) References.

(A-3) Appendices.

(c) *List of preparers and certifications.* (1) List the names, together with the qualifications and professional disciplines, of the principal contributors to the preparation of the Fuels Decision Report. Indicate the chapters or subject matters for which each principal contributor was responsible.

(2) Include a statement signed by your duly authorized representative that certifies that the principal contributors to the report have been informed that they may be questioned orally or in writing under oath in a public hearing concerning the portions of the Report for which they had responsibility.

(3) Briefly describe the process by which petitioner decided to seek an exemption, identify the persons and organizations primarily responsible for the decision and their reporting relationship within the corporation.

(d) *References.* (1) List the references which identify the reports, documents, experts, and other sources you consulted in compiling the Report. Cite these sources in accordance with acceptable documentation standards, including references to the part of the report to which they apply. If the source is unusual or little known, briefly describe its contents. Also, cite the documents enclosed as appendices and their relationships to the report.

(2) Identify at the end of each chapter of the Fuels Decision Report any information or any statement based in whole or in part on information or principles which, to your knowledge, represent significant innovations to or departures from generally accepted facts or principles.

(e) *Appendices.* Include in the appendices material which you believe substantiates any analyses fundamental to the Report, materials prepared in connection with the Report, and any other documents, studies or analyses which you believe are analytic and relevant to the decision to be made. Also include in the appendices copies of the forms you submit as part of your petition.

§ 502.4 Introduction.

This chapter is intended to give ERA a quick overview of your firm, what your firm does, and what the unit for which you are requesting an exemption is like. The purpose of this chapter is to provide a context for the remainder of the Report.

(a) Brief description of your corporation;

(b) Description of your operation at the facility under consideration; and

(c) Standard engineering description of the unit and the fuel you propose to burn in that unit, including:

(1) Description of the unit;

(2) Purpose of and need for the unit; and

(3) Operational requirements for the unit, including size (capacity, input and output in million Btu's per hour), output in terms of product or service to be supplied, and operating mode, including capacity factor, utilization factor, and fluctuations in the load.

§ 502.5 Fuels considered.

(a) If you are requesting a category 4 exemption, you must conduct a fuel search and include this chapter. The purpose of this chapter is to summarize the fuels you considered, to identify those you believed were worth considering in depth and those you rejected, and to describe briefly the reasons you rejected further consideration of certain fuels. You should request an exemption based upon your inability to use any fuel you did not reject, and prepare the chapter described in Section 502.7 for that exemption request.

(b) Identify and describe the alternate fuels and mixtures you considered. Also identify the fuel you would use if the exemption were granted. Briefly describe the types of fuels you considered, their fuel characteristics, types of units (boiler, combined cycle, etc.) and equipment needed for each fuel, quality and quantities of fuel, and other relevant considerations. Provide a clear and concise explanation of why you selected each fuel for consideration as well as a brief discussion of why you did not consider further any other alternate fuels.

§ 502.6 Alternative sites considered.

(a) If you are requesting a category 4 exemption for a new powerplant (except a scheduled equipment outage exemption), you must include this chapter in your Fuels Decision Report. The purpose of this chapter is to summarize the alternative sites you considered, to identify those you believed were worth examining in-depth and those you rejected, and to briefly describe the reason you rejected further consideration of certain sites.

(b) Identify and describe the alternative sites you examined and the alternate fuel you considered for use at each site. Provide a clear and concise explanation of the approach and methodology you used for selecting and evaluating each site, in accordance with the evidentiary requirements set forth in § 503.11 of these regulations. Also briefly address the reasons you rejected consideration of other alternative sites.

§ 502.7 Evidence required for exemption requested.

(a) If you are requesting a category 2, 3, or 4 exemption, you must include this chapter (and appropriate subchapters if you desire) in your Fuels Decision Report. The purpose of this chapter is to set forth the evidence supporting the required showings you must meet for any exemption you request. You must prepare this chapter for each exemption you are requesting.

(b) If you are requesting a category 2 exemption, this chapter must include your compliance plan as well as the evidence required for the exemption.

(c) If you are requesting a category 3 exemption, this chapter must contain sufficient information to meet the evidentiary requirements set forth in the regulation pertaining to the specific exemption you are requesting.

(d) If you are requesting a category 4 exemption, you must conduct a fuel search and prepare this chapter for each alternate fuel you considered in-depth as a reasonable option, and which provides the basis for each exemption you are requesting. For example, if you determined that coal, low Btu gas derived from coal, and solar energy were reasonable alternatives, but that technical, legal, or economic constraints prevented you from using them and made you eligible for a permanent exemption, you would prepare Evidence Required for Exemption Requested chapters for each exemption you request. Each chapter would meet the evidentiary requirements set forth for the exemption being requested based upon the fuel addressed in that chapter. The remainder of the fuels you examined—those you determined did not warrant in-depth consideration or were not reasonable alternatives—would be addressed in the Fuels Considered chapter.

(e) If you are requesting a category 4 exemption for a new powerplant, (except a scheduled outage exemption), you must meet the alternative site requirement. To do so, you must conduct a fuel search and the alternative site search required in § 503.11 of those regulations. You must prepare Evidence Required for Exemption Requested chapters not only for any exemptions you request based on fuels you examined for your proposed site, but for any exemptions you may request based upon your inability to use alternate fuels at alternative sites.

§ 502.8 Mixtures general requirement.

If you are requesting a category 3 or 4 exemption, (except for the mixtures, peakload for existing powerplants, use of LNG or international pipelines exemptions), you must include this chapter in your Fuels Decision Report. In accordance with §§ 503.9, 504.14, 505.7, or 506.14, as appropriate, demonstrate that use of a mixture(s) is not economically or technically feasible. The mixture(s) you examine must be eligible for a mixtures exemption under whichever of §§ 503.38, 504.36, 505.28, or 506.36, that applies to the unit under consideration.

§ 502.9 Alternate supply of electric power.

If you are requesting a category 3 or 4 exemption for a new powerplant, (except for a cogeneration exemption), or a state or local requirement or intermediate load exemption for an existing powerplant, you must include this chapter in your Fuels Decision Report. In accordance with § 503.7 or § 504.13, as appropriate, of these regulations, demonstrate that despite reasonable good faith efforts, there is no alternate supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. This showing must describe a diligent effort to reduce the need for the power from your proposed plant by implementing within your system whatever conservation measures are available and cost effective.

§ 502.10 Fluidized bed combustion general requirement.

If ERA has made a site-specific or generic finding that the use of a method of fluidized bed combustion of an alternate fuel is financially and technically feasible, and if you are requesting a category 3 or 4 exemption (except for a mixture, peakload for existing powerplants, use of LNG, or international pipelines exemption), you must include this chapter in your Fuels Decision Report. In accordance with §§ 503.10, 504.16, 505.8, or 506.16, as appropriate, demonstrate that the use of a method of fluidized bed combustion of an alternate fuel is not economically or technically feasible.

§ 502.11 Petroleum and natural gas consumption.

(a) If you are requesting a category 3 or 4 exemption (except cogeneration), you must complete this chapter. The purpose of this chapter is not to determine whether you are eligible for an exemption, but to provide information to ERA in carrying out the purposes of FUA. Among the ways ERA intends to use this information are development of terms and conditions for exemptions, development of terms and conditions and other ERA responses appropriate to national emergencies, establishment of aggregation jurisdiction, selection of candidates for prohibition rules and orders, and development of enforcement strategies.

(b) Identify your current and projected petroleum and/or natural gas consumption for the unit for which you are requesting an exemption, and for the facility at which the unit is located. Provide the following information:

(1) How many units do you have at the facility under consideration which burn petroleum or natural gas (including the unit for which the exemption is requested), what is their nameplate and net dependable capacity and current level of total annual fuel consumption?

(2) What are your retirement plans for your existing oil and gas-units at the facility under consideration?

(3) What are your projected (through 1990) annual levels of consumption of petroleum and natural gas (by fuel type and barrel of Mcf per year) for the unit under consideration and for all existing oil and gas units at the site under consideration?

(c) Are any alternate fuels being consumed at the site? If so, identify the fuels, identify in what units the alternate fuels are being burned, and identify the quantities of alternate fuels being used.

(d) If you are requesting an exemption which would allow you to use petroleum, identify the minimum amount of oil you would need for the unit under consideration in the event of a national emergency, such as a foreign supply interruption, which results in the reimposition of petroleum allocation controls. Also identify your plans and alternate courses of action during a national emergency if you were to be prohibited from using oil in that unit during such an emergency. For both the unit under consideration and the facility at which it is located, describe your fuel switching plans and capabilities.

§ 502.12 Conservation measures.

(a) If you are requesting a category 2, 3, or 4 exemption, you must include this chapter in your Fuels Decision Report. The purpose of this chapter is to provide us with sufficient information to assist us to identify any conservation measures which should be included in the terms and conditions we may impose if we grant you an exemption.

(b) Identify, describe and document any conservation measures you have taken or intend to take to minimize the use of oil or gas if this exemption is granted. Outline the conservation measures you intend to take, and the conservation goals you have set for yourself, for the unit under consideration, and for the facility at which the unit is or will be located. Conservation measures entail either reduction in consumption of oil and gas or increased efficiency in the utilization of oil and gas. Such measures can range from housekeeping measures to replacement of inefficient units. Such measures also could include the use of mixtures of gas or oil and alternate fuels, and new more efficient technologies. Your description of the measures you intend to use should be detailed and should include comparative consumption figures, identification of conservation equipment or techniques, proposed manner of use, proposed date of use, cost, and expected benefits and problems.

§ 502.13 Environmental impact analysis.

(a) In order to aid us in fulfilling our responsibilities under the National Environmental Policy Act (NEPA), you must include this chapter in your Fuels Decision Report if you are requesting an exemption which the Act did not exempt from compliance with NEPA. The exemptions subject to NEPA are all permanent exemptions for new powerplants or installations, and permanent exemptions from a statutory prohibition or a final prohibition rule or order for existing powerplants or installations relating to cogeneration, scheduled equipment outages, state or local requirements, or intermediate load powerplants. Material which has been prepared pursuant to any Federal, state or local requirement for environmental information for this unit or site may be incorporated by reference in this chapter and appended to the Fuels Decision Report.

(b) ERA has issued proposed detailed guidelines for environmental reports which should be used to prepare this Environmental Impacts Analysis chapter. They, and any revisions thereto, will be available in the ERA Public Document Room. These guidelines are subject to discussion and waiver at a pre-petition conference. In general, this chapter must contain the following:

(1) A description of the Federal, state and local requirements including air emission, water discharge, and waste disposal limitations which you must meet for each fuel considered;

(2) An identification of the equipment and facilities needed to meet the environmental requirements for each fuel considered;

(3) A clear and concise description of the existing site, and, in the case of new powerplants, alternative site(s) environments which may be affected by the grant or denial or your petition for exemption, including any pertinent summary technical data, maps, and diagrams;

(4) A detailed description of the probable environmental impacts resulting from the grant or denial of your petition, including direct and indirect impacts (including indirect increases or decreases in oil consumption attributable to the grant of your petition), and beneficial and negative impacts; and

(5) A discussion of how the grant or denial of your exemption would conform to or conflict with any existing or proposed Federal, state or local land use plans, policies or controls.

PART 503—NEW ELECTRIC POWERPLANTS

Subpart A—Statutory Prohibitions

Authority: (Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); E.O. 12009, 42 FR 4267).

PART 503—NEW ELECTRIC POWERPLANTS

Subpart A—Statutory Prohibitions

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibitions imposed by the Act upon new electric powerplants. The prohibitions set forth in this subpart apply to all new electric powerplants, as defined in § 500.2 unless an exemption has been granted by ERA under Subparts C and D of this Part. Any person who owns, controls, rents, or leases a powerplant is subject to the prohibitions imposed and the sanctions provided for by the Act or these prohibitions.

§ 503.2 Statutory prohibitions.

(a) Section 201 of the Act prohibits, unless an exemption has been granted under Subparts C or D of this Part, the following:

(1) The use of petroleum or natural gas as a primary energy source in any new electric powerplant; and

(2) The construction of any new powerplant without the capability to use an alternate fuel as a primary energy source.

(b) For purposes of this prohibition, construction with the capability to use an alternate fuel means that the powerplant to be constructed must be able to use, in compliance with applicable environmental requirements, an alternate fuel as the primary energy source at the time it becomes operational or at the expiration of a temporary exemption (see Definitions, § 500.2).

Subpart B—General Requirements for Exemptions

§ 503.3 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption under this Part and sets out the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 503.4 Fuels decision report.

(a) Before ERA will accept a petition for either a temporary or permanent exemption under this Part, you must include as part of your petition a Fuels Decision Report as described in Part 502, unless you are requesting a peakload or emergency purposes exemption. The Fuels Decision Report shall contain the analysis and documentation of the evidence required in support of your exemption request.

(b) Your petition may contain more than one exemption request. In this case, your petition would include one Fuels Decision Report which addresses your considerations and the appropriate forms for the exemptions you are requesting.

§ 503.5 Cost calculations for new powerplants.

(a) *General.* (1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. Its purpose is to provide ERA with a mechanism for deciding when noneconomic investments are acceptable in the best interests of the United States.

(2) The cost of using an alternate fuel in lieu of imported petroleum as a primary energy source will be deemed to be substantially in excess of the cost to use imported petroleum where the ration of the former to the latter is greater than the index set periodically by ERA.

(3) The index is currently 1.3. ERA will revise the index from time to time after public notice and an opportunity to comment. Revisions shall become effective for all ERA decisions after final publication; however, the relevant index for a specific petition will be the index in effect at the time the petition is submitted, or the index in effect at the time a decision is rendered, whichever is lower.

(4) The cost test takes into consideration cash outlays for capital investments and annual expenses, and the effect of depreciation and taxes on cash flow. There are two comparative cost tests—a general cost test and a special cost test. You must demonstrate eligibility for a permanent exemption using the procedures specified in the general cost test (paragraph (b)). You must demonstrate eligibility for a temporary exemption using the procedures specified in the general cost test (paragraph(b)) or the special cost test (paragraph(c)).

(5) The general cost test differs from the special cost test with respect to the time period over which costs are calculated and the types of fuel consuming equipment being considered. When using the general cost test, the cost must be computed for the useful life of the powerplant. When using the special cost test, the cost is computed only for the term of the exemption. In the general cost test, the proposed oil or natural gas powerplant consuming oil or natural gas is compared with an alternate fuel-capable powerplant of the same capacity consuming that alternate fuel. In the special cost test, an alternate fuel-capable powerplant consuming oil or natural gas is compared with an alternate fuel-capable powerplant consuming that alternate fuel.

(b) *Cost calculation—general cost test.* (1) You may be eligible for a permanent exemption if you demonstrate that the cost of using an alternate fuel starting with each successive year within the first 10 years of operation will always substantially exceed the cost of using imported petroleum over the useful life of the powerplant. You will have to show that the cost of using an alternate fuel, starting in each of the first 10 years of operation and using oil or natural gas until the start of using an alternate fuel, substantially exceeds the cost of using only imported petroleum.

(2) ERA will not grant a permanent exemption if a temporary exemption is warranted. Therefore, if the cost computed with successive starting dates for alternate fuel use (for the first 10 years of operation) does not always substantially exceed the cost of using imported petroleum, you would only be eligible for a temporary exemption. The length of the temporary exemption would be for a minimum period where the cost of starting to use alternate fuel always substantially exceeds the cost of using imported petroleum. For example, if you plan to burn coal and it cannot be obtained at a reasonable price for 2 years after the installation of the powerplant designed to burn coal and oil, DOE may grant a temporary exemption and allow the burning of oil for 2 years.

(3) To conduct the test, you must use the equations that follow.

(i) Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 1.

EQ 1 $$R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

(ii) Calculate the cost of using an alternate fuel and imported petroleum with equation 2.

EQ 2 $$\text{COST} = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1 - t) - t \cdot DPR_i}{(1 + K)^i}$$

(iii) Calculate the capital investment using equation 3.

EQ 3 $$I = \sum_{i=-S}^{N} \frac{I_i - ITC_i - S_i}{(1 + K)^i}$$

(4) The terms in equations 2 and 3 are defined as follows:

i=Year. Outlays before the plant becomes operational are future valued to the year before the plant becomes operational (year 0) and outlays after the plant becomes operational are present valued to the year before the plant becomes operational.

g=The number of years prior to the year before the plant becomes operational a cash outlay is made for capital investments or investment tax credit is used.

N=The useful life of the powerplant (see section d).

I_i=Yearly cash outlay (in dollars) from the year outlays first occur to the last year of the plant's useful life for capital investments. See section (d) for the equipment which must be included.

OM_i=Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (i.e., all non-capital and non-fuel cash outlays caused by putting the capital investments into service). May include labor, materials, insurance, taxes (except income taxes), etc. (See section d.)

S_i=Salvage value of capital investment (in dollars) in year i.

FL_i=Annual cash outlay for delivered fuel expenses (in dollars) in year i (see section d).

K=The discount rate expressed as a fraction (see section d).

ITC_i=Federal investment tax credit resulting from capital investments, used in year i (see section d).

DPR_i=Depreciation in year i (see section d).

t=Marginal income tax rate (see section d).

(5) Fuel transportation expenses are part of delivered fuel expenses except where you must acquire capital equipment to deliver the fuel. The cash outlays for this equipment are included in the capital outlay terms. Similarly, the expense of delivering power to your service area must be included as an annual cash outlay unless you must construct transmission facilities, in which case you must include these outlays in the capital outlay term.

(6) The step-by-step procedure that follows shows the comparison that you must make. It outlines the equipment and fuel comparisons, as well as the time comparisons.

(i) Compute the cost (COST) of using an alternate fuel in an alternate fuel-capable powerplant throughout the useful life of the powerplant with equation 2.

(ii) Compute the cost (COST) of using oil or natural gas in an oil or natural gas-fired powerplant throughout the useful life of the powerplant with equation 2.

(iii) Compute the ratio (R) of the cost of using an alternate fuel throughout the useful life of the powerplant to the cost of using oil or natural gas throughout the useful life of the powerplant with equation 1. If the ratio (R) is equal to or less than 1.3. the index set by ERA, you are not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the calculation.

(iv) Compute the cost (COST) of using an alternate fuel in an alternate fuel and oil or natural gas-capable powerplant with equation 2 assuming an alternate fuel is not used as the primary energy source until the end of the first year of operation and that oil or natural gas is used for the first year of operation. All cash outlays should reflect postponed use of alternate fuel (e.g., installation of scrubber when used).

(v) Successively compute the cost (COST) of using an alternate fuel in an alternate fuel and oil or natural gas-capable powerplant with equation 2 assuming alternate fuel is postponed until the end of the second through tenth year of operation (and oil or natural gas is used in the years preceding alternate fuel use).

(vi) Compute the ratios (R) of the cost of using an alternate fuel successively at the end of the first through tenth year to the cost of using oil or natural gas throughout the life of the powerplant with equation 1.

(vii) If all the ratios (R) computed in C and F are greater than 1.3 (an index to be set periodically by ERA), your proposed powerplant would meet the cost criteria for a permanent exemption. If one or more or the ratios (R) is equal to or less than 1.3 and a series of ratios (R), starting with the case where alternate fuel is used from the start of operation, are all greater than *1.3,* a temporary exemption would be granted for the minimum period in which the cost of starting to use alternate fuel, deferred year by year, always exceeds *1.3.*

(7) The following table shows the hypothetical results of four sets of calculations, assuming the index set by ERA is *1.3.*

Hypothetical Results of Four Sets of Calculations

Year in which alternate fuel use is commenced	Case I	Case II	Case III	Case IV
At start of operation:				
1	1.4	1.6	1.5	1.1
2	1.5	1.7	1.5	1.2
3	1.3	1.6	1.4	1.2
4	1.3	1.5	1.3	1.1
5	1.2	1.5	1.4	1.1
6	1.2	1.4	1.4	1.1
7	1.1	1.4	1.5	1.1
8	1.1	1.4	1.5	1.1
9	1.0	1.4	1.6	1.1
10	1.0	1.4	1.6	1.1

The results of the above table shows that: a 2-year temporary exemption would be granted in Case I, a permanent exemption would be granted in Case II, a 3-year temporary exemption would be granted in Case III, and no exemption would be granted in Case IV.

(c) *Cost calculations—special cost test.* (1) You may be eligible for a temporary exemption if you demonstrate that the cost of using an alternate fuel in an alternate fuel-capable powerplant will substantially exceed the cost of using oil or natural gas in an alternate fuel-capable powerplant over the period of the proposed exemption. The period of the exemption cannot exceed 10 years. You will have to show that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first 2 years of operation, and successive first years of operation, up to the period of the proposed exemption. To do so, you must perform the calculations with successive ending dates to determine the maximum length of the exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

(2) To conduct the test, you must use the equations that follow.

(i) Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 4.

$$\text{EQ 4} \qquad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

(ii) Calculate the cost using equation 5.

EQ 5

$$COST = I \times \frac{\sum_{i=1}^{P} (1+K)^{-i}}{\sum_{i=1}^{N} (1+K)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t) - t \cdot DPR_i}{(1+k)^i}$$

(3) The terms in equation 5 are the same as in equation 2 above with the addition of: P=The length of the proposed temporary exemption.

(4) The step-by-step procedure that follows shows the comparisons you must make.

(i) Compute the cost (COST) of using an alternate fuel in an alternate fuel-capable powerplant assuming the length of the proposed exemption as 1 year with equation 5.

(ii) Compute the cost (COST) of using oil or natural gas in an alternate fuel and oil or natural gas-capable powerplant assuming the length of the proposed exemption is 1 year with equation 5.

(iii) Compute the ratio (R) of the cost of using an alternate fuel for the first year to the cost of using imported petroleum for the first year with equation 4.

(iv) Repeat the calculations made in A, B, and C above assuming the length of the proposed exemption is 2 years, 3 years, 4 years, and so on, up to the period of the proposed exemption.

(v) A temporary exemption would be granted when all the ratios (R) are greater than 1.3 (the index established by ERA).

(d) *Information on parameters used in the calculation.* (1) All estimated expenditures, except natural gas, and petroleum products, shall be expressed in real (uninflated) terms by using the prices in effect at the time the petition is submitted.

(2) The delivered price of oil or natural gas used in the calculation of delivered fuel expenses must reflect the price of imported oil.

(i) If you plan to use 100 percent domestic [11] petroleum product in your facility, compute your petroleum product price with the following equation:

PFE=PF+PICO−PCCO

where:

PICO=Price of imported crude oil. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.

PCCO=Price of composite crude oil. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Programs.

PF=Price of your fuel (f.o.b. your facility). The most recent actual weighted average cost of your fuel (other than natural gas). Alternatively, if no purchases of fuel oil occurred, or you used natural gas during that month, you should use a simple average of the industrial price of fuel oil (capable of being burned in your facility) sold in your area by at least three suppliers.

PFE=Price of fuel for use in the cost calculation.

(ii) If you plan to use 100 percent imported petroleum product in your facility, compute your petroleum price with the following equation:

PFE=PF+ENT

Where:

ENT=½ × E_p × DOSR. For residual fuel oil if an entitlement has been received by the importer.

ENT=0. For all other products or if an entitlement has not been received by the importer.

e_p=Entitlement price reported in the Federal Register monthly notice for the DOE Entitlements Program.

DOSR=National domestic oil supply ratio reported in the Federal Register monthly notice for the DOE Entitlements Program.

(iii) If you plan to use a combination of domestic and imported petroleum product in your facility, you may use the price computed with the formula in (d)(2)(i) of this section or you may use a weighted average of the prices computed with the formulas in (d)(2)(i) and (ii) of this section.

(iv) If you plan to use natural gas in your facility, you must use the formula in (d)(2)(i) of this section and the price of No. 6 residual fuel oil, which meets the air quality standards in your area, as the price of fuel.

(3) Capital investments (I) must include all items which are capital investments for Federal income tax purposes. All purchased equipment which has a useful life greater than 1 year, capitalized engineering costs, land, construction, environmental offsets, fuel inventory, [12] transmission facilities, etc., that are required to be able to use the powerplant must be included. However, an item may only be included if a cash outlay is required after the decision has been made to build the powerplant. [13]

(4)(i) The operations and maintenance expenses (OM_i) and the fuel expenses (FL_i) can be computed by either of two methods, however, the one chosen must be consistently applied throughout the analysis: (A) assume an annual capacity factor of 70 percent of design capacity for the life of the plant and compute cash outlays for operations and maintenance expenses and fuel expenses on a single powerplant basis; or (B) determine the incremental increase in cash outlays for operations and maintenance expenses and fuel expenses that would occur in your region by the addition of the powerplant. The incremental increases will be computed by economically dispatching all powerplants in the region. The regional incremental increases in cash outlays would then be the operations and maintenance expenses and fuel expenses for the purposes of the cost calculation. The petitioner may economically dispatch the region for either the entire life of the powerplant and use each year's incremental increase or economically dispatch the region for the first 10 years of operation and use the average of those 10 incremental increases. The region must be your electrical region unless you can show such integrated operation is unlikely to be achieved

[11] For the purposes of the regulation, the Virgin Islands, Puerto Rico, and the U.S. Territories and possessions are domestic sources.

[12] The following fuel supplies must be included: (a) all powerplants with only steam driven turbines—78 days, (b) all powerplants with only combustion turbines—162 days, and (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—162 days.

[13] E.g., if in 1982 you are filing for an exemption to use petroleum in a (statutorily) new powerplant which became operational in 1981, you must include all the cash you have already disbursed as well as the cash you will disburse.

midway through the useful life of the powerplant and you can propose an acceptable alternative.

(ii) If you use the first methodology, the operations and maintenance expenses must include both the fixed and variable components.

(iii) If you use the second methodology, you will have to certify, subject to penalties, that the proposed plant will not use more oil than you showed it would use in the dispatch analysis.

(5) The discount rate (K) is 2.9 percent. ERA will change the discount rate from time to time after public notice and an opportunity to comment. Revisions shall become effective after final publication; however, the relevant discount rate for a specific petition will be the discount rate in effect at the time the petition is submitted.

(6)(i) The useful life (N) of a coal, oil or natural gas-fired powerplant will be 35 years. The useful life of a nuclear powerplant will be 40 years. The useful life of other alternate fuel powerplants shall be presumed to be 35 years. You may rebut this presumption with suitable engineering evidence.

(ii) If the powerplants being compared have different useful lives, you will have to modify your general cost test calculation so that the two cash flows being compared have the length of the longer useful life. To do this, you must multiply the cost—computed with equation 2—of the facility with the shorter life by the following adjustment factor (A):

$$A = \frac{\sum_{i=1}^{O} (1+k)^{-i}}{\sum_{i=1}^{M} (1+k)^{-i}}$$

where:

M=The useful life of the facility with the shorter life,

O=The useful life of the facility with the longer life, and

K=The discount rate.

(7) All Federal investment tax credit (ITC) will be applied consistently throughout the analysis in a manner consistent with Federal tax laws in effect at the time the petition is submitted.

(8) Depreciation (DPR) will be applied consistently throughout the analysis in a manner consistent with the Federal tax laws in effect at the time the petition is submitted. In general, accelerated depreciation cannot be used for gas- or oil-fired boilers. For alternate fuel fired facilities, you must use the most rapid depreciation permitted by law.

(9) The marginal income tax rate (t) is the firm's marginal Federal income tax rate for the year the petition is submitted.

(10) The design capacity of the plants being compared must be the same.

(11) All estimated cash outlays will be computed in accordance with generally accepted accounting principles.

(e) *Evidence in support of the comparative cost test.* All petitions for exemption requiring the use of the comparative cost test shall include, but not be limited to, the following information:

(1) A detailed accounting of all cash outlays, investment tax credits, and anticipated salvage for capital investments. Include a description and cost estimate of all major construction and equipment. All critical assumptions should be stated and sufficient data should be included to support your estimates.

(2) A detailed accounting of all annual cash outlays for fixed and variable operations and maintenance expenses including a description of all major elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support your estimates.

(3) A detailed accounting of all annual cash outlays for delivered fuel expenses including the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support your estimates. The fuel price and characteristics for each alternate fuel should be included.

(4) If the useful life of the new alternate fuel—other than coal or nuclear—powerplant is judged to be less than 35 years, all critical assumptions and sufficient data to support that position.

(5) A detailed accounting of the depreciation for each capital asset, including the depreciable base, tax life, and methods used. All critical assumptions should be stated and sufficient data submitted to support your estimates.

(f) *Example of calculations.* (1) The purpose of this example is solely to illustrate the mechanics of the cost tests; it should not be construed to be guidance on the application of the Federal income tax laws. The detail is only to the level of the individual terms in the cost test equations. Where the petitioner should supply a value, equations and data, we have only supplied the value.

(2) We are assuming: (i) that you are profitable to the extent that your Federal marginal income tax rate is 46 percent and that you need not carry over investment tax credits, and (ii) that you use double declining balance switching over to straight line to depreciate alternate fuel fired facilities.

(3) You are planning to build a new powerplant and the fuels you are considering are coal and oil. In this particular situation, the delivery cost of coal is much greater for the first 3 years than it will be in the later years because of a transportation problem requiring 3 years to resolve. Do you qualify for an exemption? If so, is it permanent or temporary?

(4) To determine if you qualify for a permanent exemption, you would have to use the general cost test and compute the ratios of the cost to use (i) coal for the useful life of a coal capable powerplant, (ii) oil for the first year and coal for the remainder of the useful life of a coal and oil capable powerplant, (iii) oil for the first 2 years and coal for the remainder of the useful life of a coal and oil capable powerplant * * *, and (xi) oil for the first 10 years and coal for the remainder of the useful life of a coal and oil capable powerplant to the cost of using oil for the entire life of an oil-fired powerplant.

(5) All 11 ratios would have to be higher than 1.3, which is the index for the purposes of this example, in order to qualify for a permanent exemption. However, if a series of successive ratios, starting with the case where alternate fuel is used from the start of operation, are all greater than 1.3, you would be eligible for a temporary exemption up to the last year the ratio is greater than 1.3.

(6) In this example, we will only compute the ratios of (i) the cost to use coal for the useful life of a coal capable powerplant and (ii) the cost to use oil for the first 3 years and coal for the remainder of the useful life of a coal and oil capable powerplant to the cost of using oil for the entire useful life of an oil fired plant.

(7) To determine if you qualify for a temporary exemption, if you have not already done so with the General Cost Test, of 3 years, you would have to use the Special Cost Test and compute the ratios of the cost to use coal in a coal

capable powerplant to the cost to use oil in a coal and oil capable powerplant for 1, 2, and 3 years. All three ratios would have to be higher than *1.3* in order to qualify for a 3-year temporary exemption. In this example, we will only compute the ratio of the cost to use coal in a coal capable powerplant to the cost to use oil in a coal and oil capable powerplant for 3 years.

(8) *Parameters.* A set of hypothetical parameters are given below.

(i) 500 MW coal-fired powerplant—

(A) *Captial cash flow requirements.*

Year before powerplant becomes operational:	Cash flow
−5	$19,416,000
−4	38,832,000
−3	97,079,000
−2	116,500,000
−1	77,663,000
0	38,832,000
Total	371,700,000

(B) *Operations and maintenance expense cash requirements.*

	Year
Fixed	$1,433,000
Variable	14,452,000
Total	15,885,000

(C) *Fuel expense cash requirements.*

	Years
First 3 years	$56,033,000
Fourth year through 35th year	37,355,000

(D) The plant is assumed to have a salvage value of zero.

(ii) 500 MW oil-fired powerplant—

(A) *Capital cash flow requirement.*

Year before powerplant becomes operational:	Cash flow
−4	$11,287,000
−3	22,574,000
−2	56,435,000
−1	79,009,000
0	56,435,000
Total	225,740,000

(B) *Operations and maintenance expense cash requirements.*

	Year
Fixed	$1,048,000
Variable	1,042,000
Total	2,090,000

(C) *Fuel expense cash requirements.*

	Year
First through 35th year	$93,020,000

(D) The plant is assumed to have a salvage value of zero.

(iii) 500 MW oil- and coal-fired powerplant—

(A) *Capital cash flow requirements.*

(*1*) The cash flows required to build the basic plant and make it oil capable are:

Year before powerplant becomes operational:	Cash flow
−5	$19,416,000
−4	50,119,000
−3	91,079,000
−2	116,500,000
−1	60,440,000
0	43,170,000
Total	386,730,000

(*2*) The additional cash flows required to make the plant coal capable are:

Years before powerplant becomes coal capable:	Cash flow
−1	$49,927,000
0	24,963,000
Total	74,890,000

(B) *Operations and maintenance expense cash requirements.*

(*1*) When burning oil:

	Year
Fixed	$1,048,000
Variable	1,042,000
Total	2,090,000

(*2*) When burning coal:

	Year
Fixed	$1,433,000
Variable	14,452,000
Total	15,885,000

(C) *Fuel expense cash requirements.*

(*1*) When burning oil:

	Year
First through 35th year	$93,020,000

(*2*) When burning coal:

	Year
First 3 years	$56,033,000
Fourth year through 35th year	37,355,000

(D) The plant is assumed to have a salvage value of zero and it is assumed that the oil capability will not be scrapped after 3 years but maintained in case of emergency.

(iv) The discount rate for the purpose of this example is 3 percent.

(9) *Analysis.*[13]

(i) *General cost test.*

(A) Compute the cost of using coal in a coal-fired powerplant from the start of operation.

$$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i}{(1+K)^i}$$

$$= \frac{19,416}{(1.03)^{-5}} + \frac{38,832}{(1.03)^{-4}}$$

$$+ \frac{97,079}{(1.03)^{-3}} + \frac{116,500}{(1.03)^{-2}}$$

$$+ \frac{77,663}{(1.03)^{-1}} + \frac{38,832}{(1.03)^{0}}$$

$$- \frac{0.10 \times 371,700^{1/}}{(1.03)^{1}}$$

$$= 378,627$$

[13] All dollars are in thousands.

$$COST = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1 - t) - t.DPR_i}{(1 + K)^i}$$

$$= 378,627 + \sum_{i=1}^{3} \frac{(15,885 + 56,033)(1 - 0.46)}{(1.03)^i}$$

$$+ \sum_{i=4}^{35} \frac{(15,885 + 37,355)(1 - 0.46)}{(1.03)^i}$$

$$- \sum_{i=1}^{23} \frac{0.46 \times DPR_i \ 1/}{(1.03)^i}$$

$$= 893,851$$

(B) Compute the cost of using oil in an oil fired powerplant throughout the useful life of the powerplant.

$$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i \ 2/ - S_i}{(1 + K)^i}$$

$$= \frac{11,287}{(1.03)^{-4}} + \frac{22,574}{(1.03)^{-3}}$$

$$+ \frac{56,435}{(1.03)^{-2}} + \frac{79,009}{(1.03)^{-1}}$$

$$+ \frac{56,435}{(1.03)^{0}}$$

$$= 235,057$$

[1] ITC is recognized the year powerplant is put into operation.

$$COST = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1 - t) - t.DPR_i}{(1.03)^i}$$

$$= 235,057 + \sum_{i=1}^{35} \frac{(2,090 + 93,020)(1 - 0.46)}{(1.03)^i}$$

$$- \sum_{i=1}^{23} \frac{0.46 \times DPR_i \ 1/}{(1.03)^i}$$

$$= 1,264,388$$

(C) Compute the ration of the cost of using coal from the beginning of operation to the cost of using oil throughout the useful life of the powerplant.

$$R = \frac{COST\ (COAL)}{COST\ (OIL)}$$

$$= \frac{893,851}{1,264,388}$$

$$= 0.71$$

The ratio is less than 1.3. You are not eligible for either a permanent or temporary exemption using the general cost test and need not complete the general cost test: However, for illustrative purposes, we will continue.

(D) Compute the cost of using coal in a coal and oil capable powerplant assuming coal is not used until after the third year and oil is used for the first 3 years of operation.

[1] Depreciation is double declining balance switching over to straight line. The tax life is 23 years for the entire powerplant.

[2] ITC is not allowed on this powerplant.

$$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_I}{(1 + K)^i}$$

$$= \frac{19,416}{(1.03)^{-5}} + \frac{50,119}{(1.03)^{-4}}$$

$$+ \frac{97,079}{(1.03)^{-3}} + \frac{116,500}{(1.03)^{-2}}$$

$$+ \frac{60,440}{(1.03)^{-1}} + \frac{43,170}{(1.03)^{0}}$$

$$- \frac{0.10 \times 386,730^{1/}}{(1.03)^{1}}$$

$$+ \frac{49,927}{(1.03)^{2}} + \frac{24,963}{(1.03)^{3}}$$

$$- \frac{0.10 \times 74,890^{\;2/}}{(1.03)^{4}}$$

$$I = 439,722$$

$$COST = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1 - t) - t.DPR_i}{(1 + K)^i}$$

$$= 439,722$$

$$+ \sum_{i=1}^{3} \frac{(2,090 + 93,020)(1 - 0.46)}{(1.03)^i}$$

$$+ \sum_{i=4}^{35} \frac{(15,885 + 37,355)(1 - 0.46)}{(1.03)^i}$$

$$- \sum_{i=1}^{23} \frac{0.46 \times DPR_i^{\;1/}}{(1.03)^i} - \sum_{i=4}^{26} \frac{0.46 \times DPR_i^{\;2/}}{(1.03)^i}$$

$$COST = 960,906$$

[1] ITC is recognized the year the plant is put into operation.

(E) Compute the ratio of the cost of using coal at the end of the third year to the cost of using oil throughout the life of the powerplant.

$$R = \frac{COST(COAL)}{COST(OIL)}$$

$$= \frac{960,906}{1,264,388}$$

$$= 0.76$$

(ii) *Special cost test.*

(A) Compute the cost of using coal in a coal capable powerplant assuming the length of the exemption is 3 years.

[2] ITC is recognized the year after the plant becomes coal capable.

$$COST = I \times \frac{\sum_{i=1}^{P} (1+K)^{-i}}{\sum_{i=1}^{N} (1+K)^{-i}}$$

$$+ \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t) - t.DPR_i}{(1+K)^i}$$

$$COST = 378,627 \times \frac{\sum_{i=1}^{3} (1.03)^{-i}}{\sum_{i=1}^{35} (1.03)^{-i}}$$

$$+ \sum_{i=1}^{3} \frac{(15,885 + 56,033)(1 - 0.46)}{(1.03)^i}$$

$$\sum_{i=1}^{3} \frac{0.46 \times DPR_i}{(1.03)^i} \text{ 1/}$$

$$= 121,120$$

(B) Compute the cost of using oil in a coal and oil capable powerplant assuming the exemption is 3 years.

$$COST = I \times \frac{\sum_{i=1}^{P} (1+K)^{-i}}{\sum_{i=1}^{N} (1+K)^{-i}}$$

$$\sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t) - t.DPR_i}{(1+K)^i}$$

$$COST = 439,722 \times \frac{\sum_{i=1}^{3} (1.03)^{-i}}{\sum_{i=1}^{35} (1.03)^{-i}}$$

[1] Depreciation is double declining balance switching to straight line. The tax life is 23 years for the entire powerplant.

$$+\sum_{i=1}^{3} \frac{(2090 + 93,020)(1 - 0.46)}{(1.03)^i}$$

$$-\sum_{i=1}^{3} \frac{0.46 \times DPR_i \; ^{1/}}{(1.03)^i}$$

$$= 163,027$$

(C) Compute the ratio of the cost of using coal to the cost of using oil.

$$R = \frac{COST\ (COAL)}{COST\ (OIL)}$$

$$= \frac{121,120}{163,027}$$

$$= 0.74$$

The ratio (R) is less than *1.3*. Therefore, you would not receive a temporary exemption.

§ 503.6 State approval required for powerplant.

(a) Where approval by the appropriate State regulatory authority is required prior to the construction or use of a new powerplant, you may submit a petition for an exemption for consideration by ERA prior to obtaining the approval.

(b) An exemption granted for a powerplant shall not become effective until you demonstrate to the satisfaction of ERA that all applicable approvals required by the State regulatory authority have been obtained.

§ 503.7 No alternate power supply—general requirement for certain permanent exemptions.

(a) *Application.* Section 212 of the Act provides for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, state or local requirements, fuel mixtures, emergency purposes, reliability of service or intermediate load. To qualify for one of these exemptions, Section 213(c) of the Act requires that you demonstrate to the satisfaction of ERA that, despite reasonable good faith efforts, there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. ERA, in determining whether you have satisfied this requirement, will consider only the first year of operation for your proposed plant. If you are unable to demonstrate that there is no alternate supply during this year, ERA will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result may deny your exemption. This denial would not impair long-term reliability of service, since you may submit a petition for a powerplant that would begin operation one year later.

(b) *Criteria.* ERA will determine that you have no alternate supply of power if you demonstrate all of the following.

(1) You have made a diligent effort to reduce the need for the power from your proposed plant by implementing within your system whatever conservation measures are available and cost effective, including increasing the availability of alternate fuel-fired plants and by taking whatever measures are available to you (including, where appropriate, application for waivers from certain prohibitions of the National Energy Conservation Policy Act of 1978) to encourage or assist your customers in implementing cost-effective conservation. In judging whether a conservation measure is cost effective the capacity or energy it would replace should be compared with the life cycle cost of capacity or energy from your proposed plant including capital, operations and maintenance expenses, and fuel at imported petroleum prices.

(2) You have made a diligent effort to purchase firm power for the first year of operation to cover all or part of your projected shortfall at a cost that is less than 10 percent above the annualized cost of generating power from your proposed plant (including the capital, operation and maintenance expenses, and fuel at imported petroleum prices).

(3)(i) Despite these efforts, the reserve margin in your electric region in the absence of your proposed plant would fall below 20 percent during the first year of proposed operation; or

(ii) Despite these efforts, the reserve margin will be greater than 20 percent and you have demonstrated that reliability of service would be impaired. Your demonstration relates to factors not included in the calculation of reserve margin such as transmission constraints.

(c) *Evidence:* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) The estimated peak demand for your system and the coincident peak demand for your electric region for the first year of operation of your proposed plant.

(2) The corresponding capacity projections, as well as any existing commitments by your system to purchase or sell power during that year.

(3) Evidence that you have solicited firm power contracts for the proposed first year operation, via letters to all potential sources (including non-utility sources) within or contiguous to your electric region, and also via advertisements.

(4) A calculation of the delivered cost of the firm purchased power offered in response to your solicitation(s) along with a detailed description of the method by which the annual cost of the purchased power is determined. Where relevant, the FERC Tariff Identifications intended as the basis for the purchase power contracts under negotiation (including the service schedules and/or exhibits which would apply to these contracts) should be provided.

(5) A calculation of the cost of power from your proposed plant during its initial year of operation. You may select the method of calculation, provided that the resulting cost may be meaningfully compared with the cost of purchased power. The calculation must include expenses due to capital, operations and maintenance, and fuel at imported petroleum prices. You may include cost effects of the economic dispatch of

[1] This term accounts for the initial investment required to make the plant oil capable. It does not reflect the additional investment necessary to burn coal. The depreciation method is double declining balance switching to straight line. The tax life is 23 years.

plants. The number of kilowatt hours being compared from the proposed plant and the purchased power should be the same.

(6) A description of the measures you will have taken prior to initial operation of your proposed plant to reduce energy losses within your own system, to improve the availability of your existing non-oil- or gas-fired plants, to shift part of your peak demand to off-peak periods, and to encourage or assist your customers in implementing cost-effective conservation measures.

(7) Estimates of the kilowatt and kilowatt-hour savings that would result from the conservation measures.

(8) A calculation of the net capacity shortfall in the first year of the proposed operation (compared to a 20 percent reserve margin) if your proposed plant is not built but all the reasonable purchase and conservation opportunities are exploited.

(d) *FERC Consultation.* ERA will forward a copy of any petition for which a showing under this section is required to the Federal Energy Regulatory Commission (FERC) promptly after it is filed with ERA, and ERA will consult with FERC before making a finding on "no alternative supply of power."

§ 503.8 [Reserved]

§ 503.9 Use of mixtures—general requirement for permanent exemptions.

(a) *Application.* ERA will not consider a petition for any of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, state or local requirements, cogeneration, emergency purposes, reliability of service, or intermediate load) to be complete, adequate, or acceptable for filing unless you demonstrate to the satisfaction of ERA that you have considered the use of a mixture(s) for which an exemption under Section 503.38 (Fuel mixtures) of these regulations would be available.

(b) *Demonstration.* ERA will deny any of the exemptions listed above unless you demonstrate that use of such a mixture(s) is not economically or technically feasible in the unit for which you are requesting an exemption. You must submit to ERA at least the following evidence in order to make the demonstration required by this section:

(1) If use of a mixture(s) were required, you would be eligible for one of the following permanent exemptions provided for in the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or state or local requirements, or

(2) Use of a mixture(s) is not technically or economically feasible in your specific unit due to design or special circumstances.

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) *ERA finding.* ERA may deny any of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, state or local requirements, cogeneration, emergency purposes, reliability of service, or intermediate load) if ERA finds on a site specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

(b) *Demonstration.* If ERA has made such a finding, ERA will deny your request for exemption unless you demonstrate that the use of a method of fluidized bed combustion is not economically or technically feasible. You must include in your Fuels Decision Report or any supplement thereto required by ERA (or in your petition for an emergency exemption) at least the following evidence:

(1) If use of a method of fluidized bed combustion were required, you would be eligible for one of the following permanent exemptions provided for in Section 212 of the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or state or local requirements; or

(2) Use of a method of fluidized bed combustion is not technically or economically feasible in your specific unit due to design or special circumstances.

§ 503.11 Alternative sites—general requirement for permanent exemptions.

(a) *Application.* Section 212 of the Act provides for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, state or local requirements, or intermediate load. To qualify, you must demonstrate to the satisfaction of ERA that you cannot use alternate fuels at reasonable alternative sites as well as at your proposed sites. You must show that:

(1) You examined all reasonable alternative sites in your effort to use alternate fuels; and

(2) You are unable to use alternate fuels at any of the alternative sites you considered at a cost which does not substantially exceed the cost of using imported petroleum, or, in special circumstances, for other reasons.

(b) *Evidence.* You must include in your Fuels Decision Report the following substantial evidence to corroborate the above requirements:

(1) A map indicating your proposed site and each of the alternative sites you considered;

(2) A description of each of the alternate fuels you considered for use at each alternative site you considered;

(3) A detailed description of the criteria you used to select the alternative sites you considered and to select the alternate fuels you examined for use at each alternative site;

(4) Copies or summaries of any studies you performed as part of, or in support of your search for reasonable alternative sites;

(5) All data required by § 503.5 (Cost calculation) supporting any contentions you make pertaining to the cost of using alternate fuels at alternative sites; and

(6) A detailed explanation of any contention you make concerning other reasons which would preclude use of alternative sites.

§ 503.12 Terms and conditions; compliance plans.

(a) *Terms and conditions generally.* You must comply with the terms and conditions of an exemption granted under the Act by the ERA, including terms and conditions requiring the use of effective fuel conservation measures.

(b) *Compliance plans for temporary exemptions.*

(1) A compliance plan certified by your duly authorized representative shall accompany a petition for a temporary exemption. The compliance plan shall include at least the following:

(i) A detailed schedule of progressive events and the dates upon which the events are to take place indicating how compliance with the applicable prohibitions of the Act will occur;

(ii) Evidence of binding contracts for fuel, or facilities for the production of fuel, which are required for you to comply with the applicable prohibitions of the Act; and

(iii) Any other documentary evidence which indicates an ability to comply with the applicable prohibitions of the Act.

(2) The exemption shall not be effective until the compliance plan is approved by ERA.

(3) *Revisions of compliance plans.* If the petition is granted, you must submit to ERA an updated compliance plan

certified by your duly authorized representative:

(i) At the end of each 12-month period from the effective date of the exemption;

(ii) Within 1 month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan; and

(iii) At any time the ERA, in its discretion, determines that a revised compliance plan may be necessary to reflect changes in circumstances.

(c) *Enforcement.* An exemption is subject to termination upon the violation of any provision of an exemption or any provision of the pertinent compliance plan.

Subpart C—Temporary Exemptions for New Powerplants

§ 503.20 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to temporary exemptions for new powerplants.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) You shall submit all petitions for temporary exemptions for new powerplants in accordance with the procedures set out in Part 501 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date that the powerplant is placed in service.

§ 503.21 Lack of alternate fuel supply.

(a) *Eligibility.* Section 211(a)(1) of the Act provides for a temporary exemption due to lack of an alternate fuel supply. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operation requirements of the new powerplant;

(2) For the period of the proposed exemption, the cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source as defined in Section 503.5 (Cost calculation) of these regulations; and

(3) You will be able to comply with the applicable prohibitions of these regulations at the end of the proposed exemption period.

(b) *Evidence required in support of a petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this Section:

(1) A description of your analysis of the alternate fuels you considered for use;

(2) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(3) A description of the detailed design requirements you specified for the new powerplant, including capacity, alternate fuel capability, and all other specifications;

(4) A description of the range of specific fuel characteristics of all the fuels which can be used by the new powerplant;

(5) Evidence that you sought to obtain the full range of alternate fuels which could be used by the new powerplant, including bid requests, and/or advertisements for supply contracts and all responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) Evidence of the contracts or other arrangements you have made to ensure a reliable and adequate supply of an alternate fuel at the end of the proposed exemption; and

(7) All data required by § 503.5 (Cost calculation) of these regulations necessary for computing the cost calculation formula.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accord with Section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You must submit an updated compliance plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

§ 503.22 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a temporary exemption due to a site limitation. To qualify for such an exemption, you must demonstrate that one or more of the following specific physical limitations relevant to the location or operation of your powerplant exist which, despite your diligent good faith efforts, cannot be overcome before the end of the proposed exemption period:

(1) alternate fuels would be inaccessible because of a specific physical limitation;

(2) transportation facilities for alternate fuels would be unavailable;

(3) adequate facilities for handling, using or storing an alternate fuel would be unavailable;

(4) adequate means for controlling and disposing of wastes would be unavailable;

(5) adequate and reliable supply of water would be unavailable; or

(6) other site limitations exist which would not permit the location or operation of the proposed powerplant using an alternate fuel.

(b) *Evidence to be Submitted in Support of the Petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) evidence that the site limitation is a physical limitation, and not a requirement of Federal, state, or local law which could be the basis of an exemption under § 503.36 (State or local requirements);

(2) evidence that alternative means for overcoming the specific site limitations were considered, with a detailed description of the efforts made to overcome the site limitations set out in your petition;

(3) evidence of the equipment or space requirements for which the site limitation is claimed; and

(4) evidence of contracts or other arrangements you have made to insure that the site limitation will be overcome and that you will comply with the prohibitions at the end of the proposed exemption period. Examples of evidence relevant to establishing a site limitation for purposes of a temporary exemption are as follows:

(i) detailed documentation of impediments, including rights of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) identification of transportation facilities relevant to the specific site of the powerplant and demonstration why existing facilities cannot be utilized or new facilities constructed;

(iii) copies of bid requests, advertisements, and general efforts made to secure alternative transportation facilities;

(iv) identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed powerplant;

(v) detailed scale site plans of the entire facility which include those areas not directly involved with the specific boiler;

(vi) a specific listing of all equipment necessary and not currently available to properly handle alternate fuel;

(vii) copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(viii) copies of quotes from bona fide suppliers, indicating lead times for purchase and installation of required ancillary storage of handling equipment;

(ix) specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(xi) a description of efforts made to secure off site disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

(c) *Compliance Plan.* You must submit to ERA a compliance plan in accordance with § 503.12 of these regulations simultaneously with submission of your petition. You must submit an updated compliance plan, if applicable, as required by § 503.12 of these regulations and as may be required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed five years.

§ 503.23 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that despite diligent good faith efforts:

(1) You will be unable, as of the projected date of commencement of operation, to comply with the applicable prohibitions imposed by the Act without violating applicable Federal or state environmental requirements;

(2) You will be able to comply with the applicable prohibitions imposed by the Act and with applicable environmental requirements by the end of the temporary exemption period.

(b) *Criteria.* ERA's decision with regard to environmental compliance will be based solely on analysis of your capacity to physically achieve applicable environmental requirements. Your analysis should be directed toward those conditions or circumstances which make it physically impossible for you to comply during the temporary exemption period. The cost of compliance shall not enter into the analysis, but any cost-related considerations may be presented as part of a demonstration submitted under § 503.21.

(c) *Evidence required in support of the petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) If you elect to seek a construction permit from EPA or an appropriate state agency prior to petitioning for an exemption from ERA, a copy of your application and a detailed synopsis of all supporting documents filed with or subsequent to your application to EPA or the appropriate agency.

(2) To the extent applicable, a copy of the EPA or state denial of your construction permit application;

(3) To the extent applicable, a detailed synopsis of the administrative record of the EPA or state or local permit proceedings;

(4) To the extent applicable, an analysis of the technology upon which the denial was based, including a performance comparison between the proposed technology and that technology which would provide the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of the ability to meet applicable standards and criteria when using both the proposed fuel and all alternate fuels for which you are requesting an environmental exemption. All conclusions regarding the ability of the facility to comply must be based on accepted analytical techniques, such as air quality modeling, and must reflect current conditions of the area which would be affected by the facility. You are responsible for performing the necessary sampling and collecting sufficient data to accurately characterize these conditions. Environmental compliance must be examined in the context of the available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain requests for bids and other inquiries made and responses received by you concerning the availability and performance of pollution control equipment; contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment; or other comparable evidence such as technical studies documenting efficacy of equipment to meet applicable requirements;

(6) An examination of the regulatory options available to you in seeking to achieve environmental compliance. This must include an analysis of the availability of offsets, if needed, and the potential for securing variances, and State Implementation Plan revisions, as appropriate. The analysis must illustrate and document your efforts, if any, to locate, identify, and acquire offsets, including agreements made by you with the state or other companies for acquisition of offsets. If an agreement to acquire offsets is conditioned upon the grant of a variance, or State Implementation Plan revision, you must submit a letter from the state agency indicating when a proceeding to effectuate the agreement will take place. The analysis must contain any correspondence initiated or received by you concerning these regulatory options and all technical studies you have relied upon to support your conclusions; and

(7) Evidence that there is no reasonable alternative site as specified in § 503.11 of these regulations.

In addition, you may submit any other documentation you believe demonstrates an inability to comply with applicable environmental requirements despite good faith efforts.

(d) *Compliance plan.* You must submit to ERA a compliance plan in accordance with § 503.12 of these regulations simultaneously with the submission of your petition. You must submit an updated compliance plan, if applicable, as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(e) *Other actions.*

(1) Prior to your decision to submit an exemption application, it is recommended that you request a meeting with ERA and EPA or the appropriate state or local regulatory agency to discuss options for operating an alternate fuel-fired facility in compliance with applicable environmental requirements; and

(2) You must submit a copy to ERA of your application for a construction permit at the same time you submit it to EPA or the state agency.

(f) *Duration.* This temporary exemption, taking into accounting extension and renewals, may not exceed 5 years, and will be issued by ERA for such period up to and including 5 years as the petition demonstrates if necessary.

§ 503.24 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify, you must demonstrate to the satisfaction of ERA that:

(1) You will be able to comply with the applicable prohibitions imposed by the Act by the use of a synthetic fuel derived from coal or another alternate fuel as a primary energy source in your powerplant by the end of the proposed exemption period; and

(2) You will not be able to comply with the applicable prohibitions imposed by the Act before the end of the proposed exemption period by using a synthetic fuel in your powerplant.

(b) *Evidence required in support of the petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) Copies of studies relating to the economic and technical feasibility of using synthetic fuels by your proposed powerplant;

(2) Evidence of financial commitments made to construct, operate and maintain equipment which will be capable of using synthetic fuel as a primary energy source by the end of the proposed exemption period;

(3) Copies of bid requests, advertisements, contracts and/or other agreements relating to the production, purchase, and transportation of synthetic fuel; and

(4) Information regarding any permits that may be required by Federal or state agencies for the construction and operation of a powerplant using synthetic fuels.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with § 503.12 of these regulations simultaneously with the submission of your petition. You shall submit an updated compliance plan, if applicable, as required by § 503.12 of these regulations and as may be required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption may be granted for a period up to 5 years and may be extended for up to an additional 5 years.

§ 503.25 Public interest exemption.

(a) *Policy Note:* The use of coal and other alternate fuels in lieu of petroleum and natural gas is in the public interest. ERA will grant this temporary exemption where you are unable to comply immediately with the prohibitions of the Act, where the granting of the petition would be in the public interest, and where you will be in compliance with the prohibitions imposed by the Act at the end of the exemption period. In filing your petition, you are required to complete the portions of the Fuels Decision Report (FDR) specified in § 502 of these Interim Rules and demonstrate why your proposed facility could not burn a fuel mixture during the time the exemption is effective. ERA recognizes, however, that there are situations where the public interest would best be served by not requiring the FDR and mixture demonstration; consequently, ERA strongly urges you to request a prepetition conference where, after consideration of the facts of your case, ERA could waive all or part of these requirements. As an example, ERA will generally waive these rerequirements where you temporarily need the use of a natural gas- or petroleum-fired rental unit to provide steam until the ongoing construction of an alternate fuel-fired unit is completed.

(b) *Eligibility.* Section 211(c) of the Act provides for a temporary public interest exemption. To qualify, you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances, during the period for which the exemption is requested, but that you will be capable of complying at the end of the proposed exemption period; and

(2) The granting of the petition would be in accord with the purposes of the Act and would be in the public interest.

(c) *Evidence required in support of the petition.* You must include in your Fuels Decision Report at least the following in order to make the demonstration required by this section:

(1) Substantial evidence to corroborate the eligibility requirements identified above;

(2) A demonstration that the use of a mixture, for which an exemption under § 503.38 (Fuel Mixtures) would be available, is not technically or economically feasible during the period the temporary public interest exemption is in effect; and

(3) Information and data required by § 502.4 (Introduction), § 502.7 (Evidence for Exemption Required), and § 502.12 (Conservation Measures) of the Fuels Decision Report as set out in Part 502.

(d) *Compliance Plan.* You must submit to ERA a compliance plan in accordance with § 503.12 of these regulations simultaneously with submission of your petition. You must submit, if applicable, an updated compliance plan as required by § 503.12 of these regulations or as may be required by the terms of any order granting an exemption under this subpart.

(e) *Duration.* This temporary exemption, taking into account extension and renewals, may not exceed 5 years.

Subpart D—Permanent Exemptions for New Powerplants.

§ 503.30 Purpose and scope.

(a) This subpart implements the provisions contained in Section 212 of the Act with regard to permanent exemptions for new electric powerplants.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants that petition for a permanent exemption must meet to sustain their burden of proof under the Act.

(c) If a petition for a permanent exemption is filed pursuant to § 503.31 (Lack of alternate fuel supply for the first 10 years of useful life); § 503.32 (Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum); § 503.33 (Site limitation); § 503.34 (Inability to comply with applicable environmental requirements); § 503.35 (Inability to obtain adequate capital); or § 503.36 (State or local requirements), the petitioner must demonstrate in the Fuels Decisions Report that his inability to use each reasonable alternate fuel would entitle him to one or more of the above exemptions.

(d) You must submit all petitions for permanent exemptions for new powerplants in accordance with the procedures set out in Part 501 of these regulations.

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) *Eligibility.* Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to lack of an adequate and reliable supply of alternate fuel within the first 10 years of useful life of the new powerplant. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the new powerplant; and

(2) Such a supply is not likely to be available within the first 10 years of useful life of the new powerplant.

(b) *Evidence required in support of a petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this Section:

(1) A description of the alternate unit designs you considered in a good faith

effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements you specified for the new powerplant, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the range of specific fuel characteristics of all the fuels which can be used by the new powerplant;

(4) Evidence that you sought to obtain the full range of alternate fuels which could be used by the new powerplant;

(5) Evidence that you solicited at least five bids from suppliers who could reasonably be expected to supply an adequate and reliable supply of the quality and quantity of alternate fuel needed, including bid requests and/or advertisements for supply contracts and all proposals or responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) A description of your analysis of the alternate fuel you considered, including a discussion of how you made your assessment that an adequate and reliable supply of the quality and quantity of fuel needed would not be available within the first 10 years of useful life of the new powerplant.

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) *Eligibility.* Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the new powerplant; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the new powerplant as defined in § 503.3 (Cost Calculation) of these regulations.

(b) *Evidence required in support of a petition.* You must include in your Fuels Decision Report the following evidence in order to make the demonstration required by this section:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(2) A description of the detailed design requirements for the new powerplant you specified, including capacity, alternate fuels capability, and all other pertinent specifications;

(3) A description of the range of specific fuel characteristics of all the fuels which can be used by the new powerplant;

(4) Evidence that you sought to obtain the full range of alternate fuels which could be used by the new powerplant, including bid requests and/or advertisements for supply contracts, all proposals and responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(5) All data required by § 503.5 of these regulations (Cost Calculation) necessary for computing the cost calculation formula; and

(6) A description of your analysis of the alternate fuel you considered.

§ 503.33 Site limitations.

(a) *Eligibility.* Section 212(a)(1)(B) of the Act provides for a permanent exemption due to a site limitation. To qualify for such an exemption, you must demonstrate that despite good faith efforts:

(1) alternate fuels are inaccessible as a result of a specific physical limitation to the location or operation of the proposed powerplant;

(2) transportation facilities for alternate fuels would be unavailable;

(3) adequate facilities for handling, using or storing alternate fuels would be unavailable;

(4) adequate means for controlling and disposing of wastes would be unavailable;

(5) adequate and reliable supply of water would be unavailable; or

(6) other site limitations exist which would not permit the location or operation of the proposed powerplant using an alternate fuel, and these limitations cannot be reasonably expected to be overcome within five years after commencement of operations.

(b) *Evidence to be Submitted in Support of the Petition.* You must include in your Fuels Decision Report at least the following in order to make the demonstration required by this Section:

(1) evidence that the site limitation is a physical limitation, and not a requirement of Federal, State, or local law which could be the basis of an exemption under § 503.36 (State or local requirements);

(2) evidence that alternative means for overcoming the specific site limitations were sought, with a detailed description of the efforts made to overcome the site limitations set out in your petition; and

(3) evidence of the equipment or space requirements for which the site limitation is claimed. Examples of evidence relevant to establishing a site limitation for purposes of a permanent exemption are as follows:

(i) detailed documentation of impediments, including rights of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) identification of transportation facilities relevant to the geographic site of the powerplant and demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(iv) a description of efforts made to secure off-site disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(v) copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment;

(vi) copies of bid requests, advertisements and general efforts made to secure alternative transportation facilities;

(vii) identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed powerplant;

(viii) detailed scale site plans of the entire facility which include those areas not directly involved with a specific powerplant;

(ix) a specific listing of all equipment necessary and not currently available to properly handle alternate fuels;

(x) copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilities;

(xi) copies of quotes from bona fide suppliers, indicating lead times for purchase and installation or required ancillary storage or handling equipment;

(xii) specific listing of any equipment necessary and not currently available to properly control and dispose of waste.

§ 503.34 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 212(a)(1)(C) of the Act provides for a permanent exemption due to the inability to comply with the applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts:

(1) You will be unable within 5 years after beginning operation to comply with the applicable prohibitions imposed by the Act without violating applicable Federal or state environmental requirements; and

(2) Reasonable alternative sites which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements are not available.

(b) *Criteria.* ERA's decision with regard to environmental compliance will be based solely on an analysis of your capacity to physically achieve applicable environmental requirements. The cost of compliance shall not enter into the analysis, but any cost-related considerations may be presented as part of a demonstration submitted under § 503.32.

(c) *Evidence supporting petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) If you elect to seek a construction permit from EPA or an appropriate State agency prior to petitioning for an exemption from ERA, a copy of your application and a detailed synopsis of all supporting documents filed with or subsequent to your application to EPA or the appropriate State agency;

(2) To the extent applicable, a copy of the EPA or State denial of your construction permit application;

(3) To the extent applicable, a detailed synopsis of the administrative record of the EPA or State or local permit proceedings;

(4) To the extent applicable, an analysis of the technology upon which the denial was based, including a performance comparison between the proposed technology and that technology which would provide the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of the ability to meet applicable standards and criteria when using both the proposed fuel and all alternate fuels for which you are requesting an environmental exemption. All conclusions regarding the ability of the facility to comply must be based on accepted analytical techniques, such as air quality modeling, and must reflect current conditions of the area which would be affected by the facility. You are responsible for performing the necessary sampling and collecting sufficient data to accurately characterize these conditions. Environmental compliance must be examined in the context of the available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain requests for bids and other inquiries made and responses received by you concerning the available and performance of pollution control equipment, or other comparable evidence such as technical studies documenting efficacy of equipment to meet applicable requirements.

(6) An examination of the regulatory options available to you in seeking to achieve environmental compliance. This must include an analysis of the availability of offsets, if needed, and the potential for securing variances, State Implementation Plan (SIP) revisions, as appropriate. The analysis must illustrate and document your efforts, if any, to locate and identify available offsets, and to secure variances and SIP revisions. The analysis must contain any correspondence initiated or received by you concerning these regulatory options and all technical studies you have relied upon to support your conclusions; and

(7) Evidence that there is no reasonable alternative site as specified in § 503.11 of these regulations.

In addition, you may submit any other documentation you believe demonstrates an inability to comply with applicable environmental requirements despite good faith efforts.

(d) *Other actions.*

(1) Prior to deciding to submit an exemption application, it is recommended that you request a meeting with ERA and EPA or the appropriate state or local regulatory agency to discuss options for operating an alternative fuel-fired facility in compliance with the applicable environmental requirements; and

(2) You must submit a copy to ERA of your application for a construction permit at the same time you submit it to EPA or the state agency.

§ 503.35 Inability to obtain adequate capital.

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify you must demonstrate to the satisfaction of ERA that:

(1) Despite good faith efforts you will be unable to comply with the applicable prohibitions imposed by the Act because you cannot raise the additional capital required for an alternate fuel-capable powerplant beyond that required for your proposed powerplant, and you cannot raise this additional capital due to specific restrictions (e.g., covenants on existing bonds) which constrain management's ability to raise debt or equity capital; and

(2) These specific restrictions on your ability to raise debt or equity capital could not be alleviated by any future action of your public utility commission or any other regulatory authority.

(b) *Evidence required in support of the petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) A statement of the state regulatory authority's policies on utility capital structure and formation, on the recognition of allowance for funds used during construction (in the utility's net plant) and of construction work in progress (in the utility's rate base), and on the accounting procedure for recognizing tax credits (flow-through or normalized).

(2) Relevant records pertaining to the utility's specific efforts to raise capital associated with the proposed powerplant.

(3) Five-year history of the utility's capital structure recognizing specific security issues and their current yields and investment ratings. Indicate where a security issued has specific ties to an on-line or scheduled generating unit.

(4) Five-year summary of the utility's financial record as indicated by the standard financial indicators including cash earnings and dividend records; time interest coverage ratios; price-earnings ratios; and market-to-book value ratios.

(5) Projected changes in the utility's capital structure and financial indicators in the case where the powerplant consumes:

(i) Alternate fuel; and

(ii) Oil or natural gas.

§ 503.36 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for an exemption due to state or local requirements. To qualify you must demonstrate to the satisfaction of ERA that:

(1) With respect to the proposed site of the powerplant, the operation or construction of the new powerplant using an alternate fuel is infeasible because of a state of local requirement other than a building code, nuisance or zoning law;

(2) You have in good faith attempted unsuccessfully to obtain a variance from the state or local requirement or have demonstrated why none is available;

(3) The granting of the exemption would be in the public interest and

would be consistent with the purposes of the Act;

(4) You are not entitled to an exemption under the regulations issued pursuant to Sections 212(a)(1)(A)-(D), and (a)(2), of the Act, at the site of the proposed powerplant or at any reasonable alternate site for all alternate fuels; and

(5) At the proposed site and at every reasonable alternative site where you are not entitled to an exemption under the regulations issued pursuant to Sections 212(a)(1)(A)-(D), and (a)(2), of the Act for all alternate fuels, you nevertheless would be barred at each such proposed or alternative site from burning an alternate fuel by reason of a state or local requirement.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) A copy of the pertinent state or local requirement with its citation and its legislative history;

(2) The identification and location of the administrative body which implements the requirement;

(3) A description of your attempts to obtain a variance from the requirements or a demonstration of why none is available;

(4) A description of any activities you were involved in after April 20, 1977, pertaining to the enactment of the requirement;

(5) a description of equipment, procedures, and the advance planning time necessary to comply with the requirement;

(6) A detailed description of why compliance with the state or local requirement is infeasible;

(7) The impact upon you and/or your local community, if any, should your petition be denied;

(8) An explanation of the reasons why granting this exemption would be in the public interest; and

(9) An analysis of why you cannot qualify for any of the exemptions listed in paragraph (a)(5) of this section for all alternate fuels at your proposed site and at reasonable alternative sites (§ 503.11).

(c) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

§ 503.37 Cogeneration.

(a) *Eligibility.* Section 212(c) of the Act provides for a permanent exemption for cogeneration. To qualify you must show that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used by demonstrating to the satisfaction of ERA at least the following minimum criteria:

(1) The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility where the calculation of savings is in accordance with paragraph (c) of this section; or

(2) It would be in the public interest to grant an exemption to the cogeneration facility because of special circumstances such as technical innovation or maintaining industry in urban areas.

(b) *Specifications of the cogeneration facility.*

(1) A person proposing to construct a cogeneration facility may apply for an exemption under this section if the amount of net electricity that is either sold or exchanged is 50 percent or more of the useful energy output of the facility. If the amount is less than 50 percent, see § 505.27 (Installations). Net electricity excludes sales or exchanges among owners of the cogeneration facility.

(2) Electricity generated by the proposed cogeneration facility must constitute more than 10 percent of the useful energy output of the facility and less than 90 percent of the useful energy output.

(c) *Calculation of oil and gas savings.* There is an oil and gas savings if the oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility. The calculation of the oil and gas which would otherwise be consumed must be in accordance with paragraphs (c)(1) and (2) of this section.

(1) Except for the case described in paragraph (c)(2), of this section, the oil or gas which would otherwise be consumed must be calculated as follows:

(i) You may include the oil or gas that would be consumed by facilities that are or would be too small to be covered by the FUA regulations. In the case of new small industrial units, you must demonstrate that it would be reasonable to construct units of that size.

(ii) You may include the oil or gas that would be consumed by units in place (existing or exempt) covered by FUA if they are less than 40 years old in the case of a field-erected unit or less than 20 years old in the case of a package unit. In the case of existing units, you may not include units that have burned an alternate fuel or are capable of burning an alternate fuel, and, you may only include units described in this paragraph if they will be retired or shut down if this exemption is granted.

(iii) You may include the oil or gas that would be consumed by units not yet constructed that would be covered by the FUA regulations if you can demonstrate that each unit would be entitled to an exemption.

(iv) You may include the oil or gas that would be consumed by powerplants to generate electricity supplied to the grid to the extent that such electricity, if you cogenerate, will no longer be supplied by the grid. The oil or gas portion must be based on a 10 year forecast that includes new construction and retirement of plants within those 10 years.

(2) In the case of a cogeneration facility that would consist of an existing unit or an exempted unit and a new unit, you must calculate the amount of oil or gas that would otherwise be consumed as the sum of:

(i) The five-year annual average oil or gas consumption of the existing or exempted unit; and

(ii) The amount that would be consumed in units described in paragraph (c)(1) (i)-(iv), of this section that would now be satisfied by the new cogeneration facility.

(d) *Evidence required in support of a petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) An engineering description of the cogeneration system, including proposed output and uses thereof, with sufficient detail to ensure that the facility qualifies as a cogeneration facility;

(2) A detailed oil and natural gas savings calculation identifying the projected oil or natural gas consumption of the cogeneration facility and the oil or natural gas that would otherwise be used;

(3) Identification of the FUA status of the proposed and displaced units with respect to coverage and designation as new, existing, or exempted, age of units, and alternate fuel capability of units;

(4) Identification of all persons and their roles in the proposed cogeneration facility;

(5) Where a demonstration is required that the units would be entitled to an exemption, submission of all evidence required by the regulations with respect

to the applicable exemptions, including the alternate site showings; and

(6) In the case of paragraph (a)(2) of this section, an explanation of the public interest factors you believe should be considered by ERA.

(e) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) *Eligibility.* Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You propose to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source;

(2) The amount of petrolem or natural gas you propose to use in the mixture will not exceed the minimum percentage of the total annual Btu heat input needed to maintain operational reliability of the powerplant consistent with maintaining a reasonable level of fuel efficiency.

(b) *Evidence required in support of a petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) A complete description of the fuel mixture, component elements of the mixture, and percentage of each component to be utilized;

(2) Your design specifications for the unit for which you are requesting an exemption; and

(3) An engineering assessment of the proportions of petroleum or natural gas needed to maintain operational reliability and an adequate level of fuel efficiency.

(c) *Reporting requirement.* If the exemption is granted, you must submit an annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order. The certification shall be executed by your duly authorized representative.

(d) *Solar mixtures.* ERA will grant a permanent mixtures exemption for the use of a mixture of solar energy (including wind, tide, and other intermittent sources) and petroleum or natural gas, where:

(1) Solar energy will account for at least 20 percent of the total annual Btu heat input of the unit; and

(2) You propose an acceptable plan to ERA which—

(i) Meets the evidence requirements set forth in paragraph (b) of this section; and

(ii) Contains a compliance plan prepared in accordance with § 503.12 of these regulations.

§ 503.39 Emergency purposes.

(a) *Eligibility.* Section 212(e) of the Act provides for a permanent exemption for emergency purposes. To qualify you must demonstrate to the satisfaction of ERA that you will operate and maintain the powerplant for emergency purposes only.

(b) *Definition.* For the purpose of this permanent exemption, an emergency exists when the operating utility would be required to curtail noninterruptible electric supply to its industrial customers.

(c) *Evidence required in support of a petition.* You must include in your petition at least the following evidence in order to make the demonstration required by this section:

(1) A certificate executed by a duly authorized officer of the operating utility stating that emergency operation under the provisions of this exemption will occur only when noninterruptible electric supply to industrial customers would be curtailed;

(2) All data required by § 503.7 (No alternative power supply) of these regulations demonstrating that, despite reasonable good faith efforts, there is no supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service;

(3) All data required by § 503.9 (Use of mixtures—general requirement) of these regulations demonstrating that use of a mixture(s) is not economically or technically feasible; and

(4) All data required by § 503.10 (Use of fluidized bed combustion not feasible—general requirement) if ERA has made a generic or site-specific finding that the use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

(d) *Additional information.* You must submit the following additional information:

(1) All data required by § 502.11 (Petroleum and natural gas use) of these regulations;

(2) All data required by § 502.12 (Conservation measures) of these regulations which describe any oil or natural gas conservation measures you have taken or intend to take if the exemption is granted; and

(3) All data required by § 502.13 (Environmental impacts analysis) of these regulations which will assist ERA to fulfill its responsibilities under the National Environmental Policy Act (NEPA).

(e) *Reporting requirement.* At the end of each 12-month period from the effective date of the exemption, you must report to ERA the monthly and annual amounts of electricity generated and fuel used under the provisions of this exemption with a description of the purposes of use.

§ 503.40 Permanent exemption for powerplants necessary to maintain reliability of service.

(a) *Eligibility.*

(1) Section 212(f) of the Act provides for a permanent exemption to maintain reliability of service. To qualify you must demonstrate to the satisfaction of ERA that:

(i) You are not capable of complying with the applicable prohibitions imposed by the Act without an impairment of reliability of service as measured by the loss of load probability technique described in paragraphs (a)(2) and (a)(3) of this section; and

(ii) despite diligent good faith efforts, you are not able to make the demonstration necessary to obtain a permanent exemption on the basis of lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or certain state or local requirements in the time required to prevent an impairment of reliability of service, or you are not able to construct an alternate fuel-fired plant in the time required to prevent an impairment of reliability of service.

(2) You must calculate reliability of service utilizing the loss of load probability (LOLP) technique. The LOLP must be computed for your electrical region using any 12-month period that includes the date of initial operation. It is to be calculated as the sum of either the weekly or the monthly estimates of hourly load/capacity deficits. You may decide whether to perform the calculation using weekly or monthly data. The LOLP calculation must take into consideration equipment forced outage rates, projected customer electrical demand, and generating capacity projections for the electrical region, including existing generating capacity, planned generating capacity additions and projected firm bulk electrical purchases and sales, and

projected retirements. If necessary, you may also calculate LOLP with modifications to account for transmission constraints, energy shortages, and other factors that are not adequately addressed by adhering to the foregoing specifications. You will need to discuss why such modifications are appropriate.

(3) Reliability of service will be considered impaired if the LOLP for a 12-month period, including the initial operational date of the proposed unit, is greater than:

(i) One day in 5 years if your proposed powerplant will start operating within 4 years from the filing of your petition;

(ii) One day in 3 years if your proposed powerplant will start operating between 4 and 6 years from the filing of your petition; or

(iii) One day in one year if your proposed powerplant will start operating in 6 or more years from the filing of your petition.

(4) You may choose to argue that your case for impaired reliability is supportable by criteria other than in paragraph (a)(2) of this section. If so, you must present this argument, and propose an approach for its justification, in a prepetition conference for ERA concurrence.

(b) *Evidence supporting the petition.* To submit an adequate petition for review by ERA you must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) All data you used in determining the loss of load probability;

(2) An explanation including equations of how you are calculating the loss of load probability;

(3) A description of your method and assumptions for projecting demand for your system and for your electric region;

(4) Your strategy for ending your period of reliability impairment, describing the measures you expect to take to reduce your demand and/or to increase your supply of power from sources other than your proposed plant that are either alternate fuel-fired or qualify for other exemptions;

(5) A calculation of your expected date of termination for your period of impairment. You may specify several alternate termination dates, each corresponding to a different combination of major events that are beyond your control (such as slippages of a new plant being built by a different utility in your electric region);

(6) An explanation of why there is not enough time to construct an alternate fuel-fired plant to prevent impairment of reliability of service or why there is not enough time to obtain one of the exemptions listed in paragraph (a)(1)(ii) of this section;

(7) An explanation of why the type and size of your proposed plant is the most appropriate choice, considering the conditions of operation in paragraph (c) of this section; and

(8) In addition, you may include other evidence that you believe is relevant to your case, such as:

(i) Evidence that the reliability advantages of coordination on an electric region basis cannot be achieved to an extent sufficient to remove your "impairment of reliability" by the first year of operation, reasons for this deficiency, and an estimate of when such coordination could be implemented in your region; or

(ii) Evidence that your system has a unique situation that requires the use of different reliability criteria.

(c) *Terms and conditions.* If you obtain this discretionary permanent exemption, you will be permitted to operate your proposed plant only for the purposes of preventing an impairment of reliability of service. Your "initial period of impairment" will extend from the date of initial operation of your proposed powerplant until the earliest date when you can reduce your LOLP to less than 1 day in 5 years by means of measures which are either in compliance with the prohibitions in the Act or which have qualified for other exemptions from these prohibitions. ERA, at the time it grants this exemption, will specify the expected termination date of your initial period of impairment. If circumstances beyond your control, which could not reasonably be anticipated at the time your petition was filed, cause the LOLP of your electric region to exceed 1 day in 5 years either at the end of this period or at any subsequent time, you may continue operation or recommence operation. You must report to ERA at the end of each calendar year the amounts of oil and natural gas used under this exemption. You must also supply detailed LOLP calculations to support the continuation of recommencement of operation.

(d) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

(e) *Peakload use.* You may apply for a peakload exemption in addition to this exemption for the same unit. You must meet the eligibility and evidence requirements of each exemption to obtain them. You must also comply with the reporting requirements of each.

§ 503.41 Peakload powerplants.

(a) *Eligibility.* (1) *Proposed use of petroleum.* Section 212(g) of the Act provides for a permanent exemption for peakload powerplants if you propose to use petroleum as a primary energy source in a new peakload powerplant, or propose to construct a peakload powerplant to use petroleum without the capability to use an alternate fuel as a primary energy source. To qualify you must certify to ERA that the powerplant will be operated solely as a peakload powerplant and to meet peakload demand for the life of the powerplant.

(2) *Proposed use of natural gas.* Section 212(g) of the Act provides for a permanent exemption for peakload powerplants if you propose to use natural gas as a primary energy source in a new peakload powerplant, or propose to construct a peakload powerplant to use natural gas without the capability to use an alternate fuel as a primary energy source. To qualify:

(i) You must certify to ERA that the powerplant will be operated solely as a peakload powerplant and to meet peakload demand for the life of the powerplant; and

(ii) The Administrator of the EPA or the Director of the appropriate state air pollution control agency must certify that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA you must include in your petition at least the following evidence in order to make the demonstration required by this section.

(1) The petition must be accompanied by a sworn statement signed by a duly authorized officer of the electric utility which will operate the powerplant certifying that the powerplant is to be operated solely as a peakload powerplant and to meet peakload demand for the life of the plant. The certification must set forth the design capacity of the powerplant and the maximum allowable generation of the powerplant in kilowatt hours according to the definition of peakload for each 12 months of operation as a peakload powerplant.

(2) If you propose to use natural gas or construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, an air quality certification must have been prepared for the Secretary by the Administrator of the EPA or the Director of the appropriate state air pollution control agency which meets the requirements contained in paragraph (a)(2)(ii) of this section.

(3) If your proposed peakload powerplant is to be other than a combustion turbine powerplant you must describe what constitutes peakload demand on your system, how the peakload demand is to be met, including the projected order of dispatch of existing and proposed powerplants, and an estimate of the number of kilowatt hours that the proposed plant would generate during its first 12 months of operation to meet peakload demand. ERA may also request this information from petitioners whose proposed plant is a combustion turbine.

(c) *Additional information.* You must submit the following additional information:

(1) All data required by § 502.11 (Petroleum and natural gas use) of these regulations;

(2) All data required by § 502.12 (Conservation measures) of these regulations which describe any oil or natural gas conservation measures you have taken or intend to take if the exemption is granted; and

(3) All data required by § 502.13 (Environmental impacts analysis) of these regulations which will assist ERA to fulfill its responsibilities under the National Environmental Policy Act (NEPA).

(d) *Liability for operating in excess of exemption.* The operation of a peakload powerplant which has been granted this exemption in excess of that allowed by the exemption shall be subject to penalties under Title VII, Subtitle C of the Act unless the powerplant meets the criteria set forth in section 721(c) of the Act.

(e) *Reporting requirement.* If the petition is granted, you must report to ERA, at the end of each 12-month period from the first day of operation of the powerplant and, if applicable, upon reaching the maximum number of kilowatt hours of permitted generation within each 12-month period, the name, location, and design capacity of the exempted unit, the number of hours of operation permitted by the exemption, and the number of hours of actual operation.

§ 503.42 Intermediate load powerplants.

(a) *Eligibility.* Section 211(h) of the Act provides for an exemption for use by intermediate load powerplants of petroleum as a primary energy source. To quality you must demonstrate to the satisfaction of ERA all of the following.

(1) The Administrator of the EPA or the Director of the appropriate state air pollution control agency has certified that the use of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded as described in paragraph (c) of this section.

(2) The powerplant to be constructed and operated will replace no more than the equivalent generating capacity of existing units which:

(i) Permanently cease operation within 1 month of commencement of operation of the new powerplant;

(ii) Use natural gas or petroleum as a primary energy source;

(iii) Are owned by the same person who is to operate the new powerplant; and

(iv) Would, if they burned coal, cause or contribute to a pollutant concentration in a manner described in paragraph (a)(1) of this section.

(3) The powerplant is to be operated only as an intermediate load powerplant in which the electrical generation (in kilowatt hours) for any 12-calendar-month period shall not exceed the powerplant's design capacity multiplied by 3,500 hours.

(4) The net heat input rate for the powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant.

(5) You are not entitled to an exemption under the regulations issued pursuant to Sections 212(a)(1)(A)-(D), and (a)(2), of the Act, at the site of the proposed powerplant or at any reasonable alternate site for all alternate fuels.

(6) The powerplant is to be constructed with the capability to use a synthetic fuel derived from an alternate fuel as a primary energy source.

(b) *Evidence supporting the petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the determination required by this section:

(1) An air quality certification for this unit prepared by the EPA or state air pollution control agency, meeting the requirements of paragraph (a)(1) of this section, including a listing of all alternative fuels covered by the certification;

(2) A description of the existing powerplants to be replaced by the new intermediate load powerplant which shall include—

(i) The name and location of each of the existing powerplants;

(ii) The volume of fuel consumed by type for the previous 2 years by the existing powerplants; and

(iii) The corporate ownership of the existing powerplants;

(iv) The reasons for claiming that the existing powerplants would cause or contribute to a pollutant concentration if they used coal as a primary energy source;

(3) An affidavit executed by a duly authorized officer of the electric utility which will operate the proposed powerplant certifying that the powerplant shall be operated at all times in the future only as an intermediate load powerplant. The certification shall set forth the design capacity of the proposed powerplant and the maximum allowable generation of the proposed powerplant in kilowatt hours for its first 12 months of operation as an intermediate load powerplant;

(4) An affidavit by a duly authorized officer and a qualified engineer of the utility operating the powerplant which certifies that the powerplant can operate at a heat rate of 9,500 Btu's per kilowatt hour or less throughout the useful life of the powerplant;

(5) An affidavit by a duly authorized officer and a qualified engineer of the operating utility certifying that the powerplant will meet the synthetic fuels capability requirement described in paragraph (a)(6) of this section, identifying the specific synthetic fuels, and agreeing to cease using petroleum when ERA has found that such synthetic fuels are available;

(6) An analysis of why you cannot qualify for the exemptions listed in paragraph (a)(5) of this section for all alternate fuels at the site of your proposed powerplant or at any reasonable alternate site. As part of your analysis you should identify at least one site at which an intermediate load powerplant burning an alternate fuel could not be ruled out by the criteria in any of the above-named exemptions, and should identify the type of plant and the fuel;

(7) Identification of the synthetic fuel(s) your proposed plant is designed to use, with appropriate documentation including:

(i) The reasons for your choice;

(ii) Your expected source of synthetic fuel, if known;

(iii) The year when you expect the synthetic fuel to be available in adequate quantity at an acceptable price;

(iv) Estimates of the future prices of the synthetic fuel your plant would be designed to use;

(v) Your role, if any, in developing the facilities to produce the synthetic fuel;

(vi) The special features of your proposed plant that will enable it to use synthetic fuel(s);

(vii) Your basis for believing that these fuels can be burned in your proposed plant in conformance with applicable Federal and state environmental standards.

(c) *Terms and conditions.* ERA, if it grants you this exemption, will set as a condition the amount of oil to be used by the proposed powerplant. In general, ERA would require that the granting of this exemption result in a reduction in oil use or a reduction in the rate of oil increase by your system. The reduced oil use would be achieved by ceasing operation of the applicable existing units and by employing the more efficient proposed unit in their place.

(d) *Reporting requirement.* If the petition is granted, you must report to ERA, at the end of each 12-month period from the first day of the month following the effective date of the exemption and, if applicable, upon reaching the maximum number of hours of permitted operation within each 12-month period, the name, location, and design capacity of the exempt unit, the number of hours of operation permitted by the exemption, and the number of hours of actual operation. You must also report at the same time the amount of petroleum used by the unit and the total amount of petroleum used by all units in your system.

(e) *Periodic review.* ERA shall, from time to time, review this exemption and shall terminate it when it finds that there is available a supply of synthetic fuel suitable for use by the exempt powerplant.

(f) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

PART 504—EXISTING ELECTRIC POWERPLANTS [RESERVED]

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

Subpart A—Prohibitions

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620 92 Stat. 3289 (42 U.S.C. 8301 et seq.); E.O. 12009, 42 FR 4267.

PART 505—NEW MAJOR FUEL BURNING INSTALLATIONS

Subpart A—Prohibitions

§ 505.1 Purpose and scope.

(a) *Purpose.* This subpart sets forth the statutory prohibitions imposed on new major fuel burning installations which are boilers and establishes the criteria and procedures ERA intends to employ in administering and implementing its authority to prohibit nonboilers from using petroleum or natural gas.

(b) *Scope.* The prohibitions set out in this subpart apply to all new major fuel burning installations, as defined in Part 500, except those granted an exemption under Subparts C and D of this Part. Any person who owns, controls, operates, rents or leases an installation is subject to the prohibitions imposed and the sanctions provided for by the Act or these regulations.

§ 505.2 Prohibitions.

(a) *Prohibition on the Use of Natural Gas or Petroleum as a Primary Energy Source in Boilers.* Section 202(a) of the Act prohibits, unless an exemption has been granted under Subparts C or D of this Part, the use of petroleum or natural gas as a primary energy source in any new installation consisting of a boiler.

(b) *Prohibition on the Use of Natural Gas or Petroleum as a Primary Energy Source in Nonboilers.* (1) Prohibition by Rule.

(i) ERA may prohibit, by issuance of a rule, certain categories of new major fuel burning installations, other than boilers, from the use of petroleum or natural gas as a primary energy source.

(ii) In such a rulemaking proceeding ERA will consider any special circumstances or characteristics of the category of nonboilers that would be prohibited from using natural gas or petroleum as a primary energy source. Factors to be considered include the overall technical feasibility of members of the category to burn an alternate fuel, as well as their size and their geographic location. ERA will consider all other circumstances, characteristics, and factors it deems relevant and appropriate which are brought to its attention.

(iii) Enforcement of a final rule under this subsection will be stayed while ERA is considering any petition filed in accordance with Subpart F of Part 501 for an exemption from the prohibition established by rule for that installation. For ERA to stay the rule as it pertains to your installation under the procedures outlined in Part 501 your petition must be filed within 60 days after publication of the final rule in the Federal Register. The stay will remain in effect pending judicial review of ERA's action upon your exemption petition.

(iv) No final rule will apply to an installation that—

(A) Has received an order containing a comparable prohibition;

(B) Was proposed to receive an order but did not because of a demonstration that the installation qualified or would qualify for an exemption under the Act; or

(C) Has been granted an exemption in accordance with Subparts C and D;

(2) Prohibition by Order.

(i) ERA may prohibit, by order, the use of natural gas or petroleum as a primary energy source in a new major fuel burning installation consisting of a nonboiler, if that installation has not been identified as a member of a category subject to a final rule at the time of the issuance of the proposed order.

(ii) ERA may not issue a final order to your installation covered by this subsection if you can demonstrate that your installation is eligible for an exemption. However, if your installation is eligible only for a temporary exemption, ERA may issue you a final order that will take effect at the expiration of the temporary exemption.

(iii) If ERA may not issue a final order because your facility is eligible for a permanent exemption, or if the effective date of the order is delayed during the period that a temporary exemption is effective, ERA may take appropriate action to assure that you comply with the terms and conditions, if any, of the order granting the exemption.

(3)(i) ERA may not prohibit the use of petroleum or natural gas in your installation covered by this subsection if you began the acquisition or construction of the nonboiler installation before the date the proposed rule or proposed order containing the prohibition was published.

(ii) If you began acquisition or construction of the installation prior to the date of publication of the proposed rule or proposed order, ERA will consider your installation to be an "existing" installation for purposes of treatment under the Existing Major Fuel Burning Installations section (Title III, Subtitle A) of the Act.

Subpart B—General Requirements for Exemptions

§ 505.3 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption from the prohibitions set out under this Part and establishes the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 505.4 Fuels decision report.

(a) Before ERA will accept a petition for either a temporary or permanent exemption under this Part, you must include as part of your petition a Fuels Decision report, as described in Part 502, unless you are requesting an exemption for emergency, retirement or peakload (new powerplants only) purposes. The Fuels Decision Report shall contain the analysis and documentation of the evidence required in support of the exemption request.

(b) Your petition may contain more than one exemption request. In this case, your petition would include one Fuel Decision Report which addresses your considerations and the appropriate forms for the exemptions you are requesting.

§ 505.5 Cost calculation for new installations.

(a) *General.*

(1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. Its purpose is to provide ERA with a mechanism for deciding when noneconomic investments are acceptable in the best interests of the United States.

(2) The cost of using an alternate fuel in lieu of imported oil or gas as a primary energy source will be deemed to be substantially in excess of the cost to use imported petroleum where the ratio of the former to the latter is greater than the index set periodically by ERA.

(3) The index is currently 1.3. ERA will revise the index from time to time after public notice and time to comment. Revisions shall become effective for all ERA decisions after final publication; however, the relevant index for a specific petition will be the index in effect at the time the petition is submitted, or the index in effect at the time a decision is rendered, whichever is lower.

(4) The cost test takes into consideration cash outlays for capital investments and annual expenses, and the effect of depreciation and taxes on the cash flow. There are two comparative cost tests—a general cost test and a special cost test. You must demonstrate eligibility for a permanent exemption using the procedures specified in the general cost test (paragraph (b)). You must demonstrate eligibility for a temporary exemption using the procedures specified in the general cost test (paragraph (b)) or the special cost test (paragraph (c)).

(5) The general cost test differs from the special cost test with respect to the time period over which costs are calculated and the types of fuel consuming equipment being considered. When using the general cost test, the cost is computed for the useful life of the installation. When using the special cost test, the cost is computed only for the term of the exemption. In the general cost test, the proposed oil or natural gas installation consuming oil or natural gas is compared with an equivalent alternate fuel-capable installation of the same capacity consuming that alternate fuel. In the special cost test, an alternate fuel-capable installation consuming oil or natural gas is compared with an alternate fuel-capable installation consuming that alternate fuel.

(b) *Cost calculation—general cost test.*

(1) You may be eligible for a permanent exemption if you demonstrate that the cost of using an alternate fuel starting anytime within the first 10 years of operations will always substantially exceed the cost of using imported petroleum over the useful life of the unit. You will have to show that the cost of using an alternate fuel, starting in each of the first 10 years of operation and using oil or natural gas until the start of using an alternate fuel, substantially exceeds the cost of using only imported petroleum.

(2) ERA will not grant a permanent exemption if a temporary exemption is warranted. Therefore, if the cost computed with successive starting dates for alternate fuel use (for the first 10 years of operation) does not always substantially exceed the cost of using imported petroleum, you would only be eligible for a temporary exemption. The length of the temporary exemption would be the minimum period within which the cost of starting to use alternate fuel always substantially exceeds the cost of using imported petroleum. For example, if you plan to burn coal which cannot be obtained at a reasonable price for 2 years after the installation of the boiler designed to burn coal and oil, ERA may grant a temporary exemption and allow the burning of oil for 2 years.

(3) To conduct the test, you must use the equations that follow.

(i) Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 1.

$$\text{EQ 1} \qquad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

(ii) Calculate the cost of using an alternate fuel and imported petroleum with equation 2.

EQ 2
$$COST = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1 - t) - t(DPR_i)}{(1 + K)^i}$$

(iii) Calculate the capital investment using equation 3.

EQ 3
$$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i}{(1 + K)^i}$$

(4) The terms in equations 2 and 3 are defined as follows:

i—Year. Outlays before the plant becomes operational are future valued to the year before the plant becomes operational (year 0) and outlays after the plant becomes operational are present valued to the year before the plant becomes operational.

g—The number of years prior to the year before the plant becomes operational a cash outlay is made for capital investments or investment tax credit is used.

N—The useful life of the installation (see section d).

I_i—Yearly cash outlay (in dollars) from the year the outlays first occur to the last year of the installation's useful life for capital investments. (See section d for the equipment which must be included.)

OM_i—Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (i.e., all non-capital and non-fuel cash outlays caused by putting the capital investments into service). May include labor, materials, insurance, taxes (except income taxes), etc. (see section d.)

t—Marginal income tax rate (see section d).

FL_i—Annual cash outlay for delivered fuel expenses (in dollars) in year i (see section d).

K—The discount rate expressed as a fraction (see section d).

DPR_i—Depreciation in year i (see section d).

S_i—Salvage value of capital investment (in dollars) in year i.

ITC_i—Federal investment tax credit resulting from capital investments used in year i (see section d).

(5) The step-by-step procedure that follows shows the comparisons that you must make. It outlines the equipment and fuel comparisons, as well as the time comparisons.

(i) Compute the cost (COST) of using an alternate fuel in an alternate fuel-capable installation throughout the useful life of the installation with equation 2.

(ii) Compute the cost (COST) of using oil or natural gas in an oil or natural gas-fired installation throughout the useful life of the installation with equation 2.

(iii) Compute the ratio (R) of the cost of using an alternate fuel throughout the useful life of the installation to the cost of using oil or natural gas throughout the useful life of the installation with equation 1. If the ratio (R) is equal to or less than 1.3, the index set by ERA, you are not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the calculation.

(iv) Compute the cost (COST) of using an alternate fuel in an alternate fuel and oil or natural gas-capable installation with equation 2 assuming an alternate fuel is not used as the primary energy source until the end of the first year of operation. All cash outlays should reflect postponed use of alternate fuel (e.g., installation of scrubber when used).

(v) Successively compute the cost (COST) of using an alternate fuel in an alternate fuel and oil or natural gas-capable installation with equation 2 assuming alternate fuel is postponed until the end of the second through tenth year of operation (and oil or natural gas is used in the years preceding alternate fuel use).

(vi) Compute the ratios (R) of the cost of using an alternate fuel successively at the end of the first through tenth year to the cost of using oil or natural gas throughout the life of the installation with equation 1.

(vii) If all the ratios (R) computed in C and F are greater than 1.3 (an index to be set periodically by ERA), your proposed installation would meet the cost criteria for a permanent exemption. If one or more of the ratios (R) is equal to or less than 1.3 and a series of ratios (R), starting with the case where alternate fuel is used from the start of operation, are all greater than 1.3, a temporary exemption would be granted for the minimum period in which the cost of starting to use alternate fuel, deferred year by year, always exceeds 1.3.

(6) The following table shows the hypothetical results of four sets of calculations assuming the index is 1.3:

Hypothetical Results of Four Sets of Calculations

Year in which alternate fuel use is commenced	Case I	Case II	Case III	Case IV
At Start of Operation				
1	1.4	1.6	1.5	1.1
2	1.5	1.7	1.5	1.2
3	1.3	1.6	1.4	1.2
4	1.3	1.5	1.3	1.1
5	1.2	1.5	1.4	1.1
6	1.2	1.4	1.4	1.1
7	1.1	1.4	1.5	1.1
8	1.1	1.4	1.5	1.1
9	1.0	1.4	1.6	1.1
10	1.0	1.4	1.6	1.1

The results of the above table show that: a 2-year temporary exemption would be granted in Case I, a permanent exemption would be granted in Case II, a 3-year temporary exemption would be granted in Case III, and no exemption would be granted in Case IV.

(c) *Cost calculation—special cost test.* (1) You may be eligible for a temporary exemption if you demonstrate that the cost of using an alternate fuel in an alternate fuel-capable installation will substantially exceed the cost of using oil or natural gas in an alternate fuel-capable installation over the period of the proposed exemption. The period of the exemption cannot exceed 10 years. You will have to show that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation; the first 2 years of operation, and successive first years of operation, up to the period of the proposed exemption. To do so, you must perform the calculations with successive ending dates to determine the maximum length of the exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

(2) To conduct the test, you must use the equations that follow.

(i) Calculate the ratio (R) of the cost of using an alternate fuel to the cost of using imported petroleum with equation 4.

$$\text{EQ 4} \quad R = \frac{\text{COST (ALTERNATE)}}{\text{COST (OIL)}}$$

(ii) Calculate the cost using equation 5.

$$\text{EQ 5} \quad \text{COST} = I \times \frac{\sum_{i=1}^{P} (1+K)^{-i}}{\sum_{i=1}^{N} (1+K)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t) - t(DPR_i)}{(1+K)^i}$$

(3) The terms in equation 5 are the same as in equation 2 above with the addition of:

P—The length of the proposed temporary exemption.

(4) The step-by-step procedure that follows shows the comparisons you must make.

(i) Compute the cost (COST) of using an alternate fuel in an alternate fuel-capable installation assuming the length of the proposed exemption is 1 year with equation 5.

(ii) Compute the cost (COST) of using oil or natural gas in an alternate fuel and oil or natural gas-capable installation assuming the length of the proposed exemption is 1 year with equation 5.

(iii) Compute the ratio (R) of the cost of using an alternate fuel for the first year to the cost of using imported petroleum for the first year with equation 4.

(iv) Repeat the calculations made in A, B, and C above assuming the length of the proposed exemption is 2 years, 3 years, 4 years, and so on, up to the period of the proposed exemption.

(v) A temporary exemption would be granted when all the ratios (R) are greater than *1.3* (the index established by ERA).

(d) *Information on parameters used in the calculation.*

(1) All estimated expenditures, except natural gas and petroleum products, shall be expressed in real (uninflated) terms by using the prices in effect at the time the petition is submitted.

(2) The delivered price of oil or natural gas used in the calculation of delivered fuel expenses must reflect the price of imported oil.

(i) If you plan to use 100 percent domestic [15] petroleum product in your facility, compute your petroleum price with the following equation:

PFE=PF+PICO−PCCO

where

PICO=Price of imported crude oil. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.

PCCO=Price of composite crude oil. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Programs.

PF=Price of your fuel (f.o.b. your facility). The most recent actual weighted average cost of your fuel oil (other than natural gas). Alternatively, if no purchases of fuel oil occurred, or you used natural gas during that month, you should use a simple average of the industrial price of fuel oil (capable of being burned in your facility) sold in your area by at least three suppliers.

PFE=Price of fuel for use in the cost calculation.

(ii) If you plan to use 100 percent imported petroleum product in your facility, compute your petroleum price with the following equation:

PFE=PF+ENT

where

ENT=½×E_p ×DOSR for residual fuel oil if an entitlement has been received by the importer.

ENT=0 for all other products or if an entitlment has not been received by the importer.

E_p =entitlement price reported in the Federal Register monthly notice for the DOE Entitlements Program.

DOSR=national domestic oil supply ratio reported in the Federal Register monthly notice for the DOE Entitlements Program.

(iii) If you plan to use a combination of domestic and imported petroleum product in your facility, you may use the prices computed with the formula in (d)(2)(i) of this section or you may use a weighted average of the prices computed with the formulas in (d)(2) (i) and (ii) of this section.

(iv) If you plan to use natural gas in your facility, you must use the formula in (d)(2)(i) of this section and the price of #6 residual fuel oil, which meets the air quality standards in your area, as the price of fuel.

(3) Capital investments (I) must include all items which are capital investments for Federal income tax purposes. All purchased equipment which has a useful life greater than 1 year, capitalized engineering costs, land, construction, environmental offsets, fuel inventory, [16] piping, etc., that are required to be able to use the installation must be included. However, an item may only be included if a cash outlay is required after the decision has been made to build the installation. [17]

(4) The operating and maintenance expenses (OM_i) must reflect both fixed and variable components. The firm must specify how much the installation will be used (utilization factor) when computing the variable components.

(5) The fuel expenses (FL_i) depend on how much the installation is used. The firm must specify how much the installation will be used, at what firing rates and the amount of fuel that will be burned annually. If an exemption is granted, it will be conditioned, subject to penalties, upon the petitioner burning no more than the maximum amount of fuel he could have specified and still have been granted the exemption.

(6) The discount rate (K) is *7.7* percent. ERA will change the discount rate from time to time after public notice and an opportunity to comment. Revisions shall become effective after final publication; however, the relevant discount rate for a specific petition will be the discount rate in effect at the time the petition is submitted:

(7)(i) The useful life (N) of major fuel burning installations shall be 40 years. You may rebut this presumption with suitable engineering evidence.

(ii) If the installations being compared have different useful lives, you will have

[15] For the purpose of this regulation, the Virgin Islands, Puerto Rico, and the U.S. territories and possessions are domestic sources.

[16] For industrial boilers, the greater of: (1) 21 days fuel supply, or (2) sufficient fuel to fill 60 percent of the storage volume must be included.

[17] E.g. if in 1962 you are filing for an exemption to use petroleum in a (statutorily) new installation which became operational in 1961, you must include all the cost you have already disbursed as well as the cost you will disburse.

to modify your general cost test calculation so that the two cash flows being compared have the length of the longer useful life. To do this you must multiply the cost—computed with equation 2—of the facility with the shorter life by the following adjustment factor (A).

$$A = \frac{\sum_{i=1}^{O} (1 + K)^{-i}}{\sum_{i=1}^{M} (1 + K)^{-i}}$$

where

M=the useful life of the facility with the shorter life,

O=the useful life of the facility with the longer life, and

K=the discount rate

(8) All Federal investment tax credits (ITC) will be applied consistently throughout the analysis in a manner consistent with the Federal tax laws in effect at the time the petition is submitted.

(9) Depreciation (DPR) will be applied consistently throughout the analysis in a manner consistent with Federal tax laws in effect at the time the petition is submitted. In general, accelerated depreciation cannot be used for gas- or oil-fired boilers. For alternate fuel fired facilities you must use the most rapid depreciation permitted by law.

(10) The marginal income tax rate (t) is the firm's marginal Federal income tax rate for the year the petition is submitted.

(11) The design capacity of the installations being compared must be the same.

(12) All estimated expenditures will be computed in accordance with generally accepted accounting principles.

(e) *Evidence in support of the comparative cost test.*

All petitions for exemption requiring the use of the comparative cost test shall include, but not be limited to, the following information:

(1) A detailed accounting of all cash outlays, investment tax credits, and anticipated salvage for capital investments. Include a description and cost estimate of all major construction and equipment. All critical assumptions should be stated and sufficient data should be included to support your estimates.

(2) A detailed accounting of all annual cash outlays for fixed and variable operations and maintenance expenses including a description of all major elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support your estimates.

(3) A detailed accounting of all annual cash outlays for delivered fuel expenses including the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support your estimates. The fuel price and characteristics for each alternate fuel should be included.

(4) If the useful life of the installation is judged to be less than 40 years, all critical assumptions and sufficient data to support that position.

(5) A detailed accounting of the depreciation for each capital asset including the depreciable base, tax life and methods used. All critical assumptions should be stated and sufficient data included to support your estimates.

(6) A detailed justification of utilization factor including: a summary of your historic use of similar equipment, a projection of future use, and a statement explaining why scheduling could not be modified to increase the utilization factor.

(f) *Example of calculations.* (1) The purpose of this example is solely to illustrate the mechanics of the cost tests; it should not be construed to be guidance on the application of the Federal income tax laws. The detail is only to the level of the individual terms in the cost test equations. Where the petitioner should supply a value, equations, and data, we have only supplied the value.

(2) We are assuming: (i) That you are profitable to the extent that your Federal marginal income tax rate is 46 percent and that you need not carry over investment tax credits, and (ii) that you use double declining balance switching over to straight line to depreciate alternate fuel fired facilities.

(3) You are planning to build a new major fuel burning installation and the fuels you are considering are coal and oil. In this particular situation, the delivery cost of coal is much greater for the first 3 years than it will be in the later years because of a transportation problem requiring 3 years to resolve. Do you qualify for an exemption? If so, is it permanent or temporary?

(4) To determine if you qualify for a permanent exemption, you would have to use the general cost test and compute the ratios of the cost to use (i) coal for the useful life of a coal-capable installation, (ii) oil for the first year and coal for the remainder of the useful life of a coal- and oil-capable installation, (iii) oil for the first 2 years and coal for the remainder of the useful life of a coal- and oil-capable installation, . . ., and (xi) oil for the first 10 years and coal for the remainder of the useful life of a coal- and oil-capable installation to the cost of using oil for the entire life of an oil-fired installation.

(5) All 11 ratios would have to be higher than, for purposes of this example, 1.3 in order to qualify for a permanent exemption. However, if a series of successive ratios, starting with the case where alternate fuel is used from the start of operation, are all greater than 1.3, you would be eligible for a temporary exemption up to the last year the ratio is greater than 1.3.

(6) In this example, we will only compute the ratios of (1) the cost to use coal for the useful life of a coal capable installation and (2) the cost to use oil for the first 3 years and coal for the remainder of the useful life of a coal- and oil-capable installation to the cost of using oil for the entire useful life of an oil-fired installation.

(7) To determine if you qualify for a temporary exemption, if you have not already done so with the general cost test, of 3 years, you would have to use the special cost test and compute the ratios of the cost to use coal in a coal-capable installation to the cost to use oil in a coal- and oil-capable installation for 1, 2, and 3 years. All three ratios would have to be higher than 1.3 in order to qualify for a 3 year temporary exemption. In this example, we will only compute the ratio of the cost to use coal in a coal-capable installation to the cost to use oil in a coal- and oil-capable installation for 3 years.

(8) *Parameters.* A set of hypothetical parameters are given below.

(i) 200,000,000 Btu/hr coal boiler—

(A) *Capital cash flow requirements.*

Year before boiler becomes operational, and	Cash flow
−3	$906,000
−2	3,622,000
−1	3,622,000
0	906,000
Total	9,055,000

(B) *Operations and maintenance expense cash requirements.*

Fixed	$1,449,000
Variable	540,000
Total	1,989,000

(C) *Fuel Expense Cash Requirements.*

First 3 years	$2,460,000
Fourth year through 40th year	1,640,000

(D) The plant is assumed to have a salvage value of zero.

(ii) 200,000,000 Btu/hr oil boiler—

(A) *Capital cash flow requirements.*

Year before boiler becomes operational, and	Cash flow
−1	$954,000
0	954,000
Total	1,908,000

(B) *Operations and maintenance expense cash requirements.*

Fixed	$371,000
Variable	100,000
Total	471,000

(C) *Fuel Expense Cash Requirements.*

First through 40th year	$2,742,000

(D) The plant is assumed to have a salvage value of zero.

(iii) 200,000,000 Btu/Hr oil- and coal-fired boiler—

(A) *Capital cash flow requirements.*

(*1*) The cash flows required to build the basic boiler and make it oil capable are:

Year before boiler becomes operational, and	Cash flow
−3	$934,000
−2	3,734,000
−1	3,734,000
0	934,000
Total	9,336,000

(*2*) The additional cash flows required to make the plant coal-capable are:

Year before boiler becomes operational, and	Cash flow
−1	$314,000
0	906,000
Total	1,220,000

(B) *Operations and maintenance expense cash requirements.*

(*1*) When burning oil—

Fixed	$371,000
Variable	100,000
Total	471,000

(*2*) When burning coal—

Fixed	$1,449,000
Variable	540,000
Total	1,989,000

(C) *Fuel expense cash requirements.*

(*1*) When burning oil—

First through 40th year	$2,742,000

(*2*) When burning coal—

First 3 years	$2,460,000
Fourth through 40th	1,640,000

(D) The plant is assumed to have a salvage value of zero and it is assumed that the oil capability will not be scrapped after 3 years but maintained in case of emergency.

(iv) The discount rate for the purpose of this example is 8 percent.

(9) *Analysis.*[18]

(i) *General cost test.*

(A) Compute the cost of using coal in a coal-fired boiler from the start of the operation.

[18] All dollars are in thousands.

$$I = \sum_{i=-g}^{K} \frac{I_i - ITC_i - S_i}{(1+K)^i}$$

$$= \frac{906}{(1.08)^{-3}} + \frac{3,622}{(1.08)^{-2}}$$

$$+ \frac{3,622}{(1.08)^{-1}} + \frac{906}{(1.08)^{0}}$$

$$- \frac{0.10 \times 9,055}{(1.08)}\ 1/$$

$$I = 9,345$$

$$COST = I +$$

$$\sum_{i=1}^{N} \frac{(OM_i + FL_i)\ (1-t) - t.DPR_i}{(1+K)^i}$$

---

1 ITC is recognized the year boiler is put into operation.

$$= 9,345 + \sum_{i=1}^{3} \frac{(1,989 + 2,460)\ (1 - 0.46)}{(1.08)^i}$$

$$+ \sum_{i=4}^{40} \frac{(1.989 + 1,640)\ (1 - 0.46)}{(1.08)^i}$$

$$- \sum_{i=1}^{23} \frac{0.46 \times DPR_i\ 1/}{(1.08)^i}$$

$$= 31,614$$

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1 Depreciation is double declining balance switching over to straight line. The tax life is 23 years for the boiler.

(B) Compute the cost of using oil in an oil-fired boiler throughout the useful life of the boiler.

$$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i^{1/} - S_i}{(1+K)^i}$$

$$= \frac{954}{(1.08)^{-1}} + \frac{954}{(1.08)^{0}}$$

$$= 1{,}984$$

$$COST = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)\ (1-t)\ - t.DPR_i}{(1+K)^i}$$

$$= 1{,}984 + \sum_{i=1}^{40} \frac{(471 + 2{,}742)\ (1 - 0.46)}{(1.08)^i}$$

$$- \sum_{i=1}^{23} \frac{0.46 \times DPR_i^{2/}}{(1.08)^i}$$

$$= 22{,}278$$

---

[1]ITC is not allowed on the boiler.

[2]Depreciation is straight line. The tax life is 23 years for the boiler

(C) Compute the ratio of the cost of using coal from the beginning of the operation to the cost of using oil throughout the useful life of the boiler.

$$R = \frac{\text{COST (COAL)}}{\text{COST (OIL)}}$$

$$= \frac{31,614}{22,278}$$

$$= 1.42$$

Since the ratio (R) is greater than 1.3 you may be eligible for an exemption and should complete the calculation.

(D) Compute the cost of using coal in a coal- and oil-capable boiler, assuming coal is not used until after the third year and oil is used for the first 3 years of operation.

$$I = \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i}{(1+K)^i}$$

$$= \frac{934}{(1.08)^{-3}} + \frac{3,734}{(1.08)^{-2}} + \frac{3,734}{(1.08)^{-1}} + \frac{934}{(1.08)^{0}} - \frac{0.10 \times 9,336^{1/}}{(1.08)^{1}} + \frac{314}{(1.08)^{2}} + \frac{906}{(1.08)^{3}} - \frac{0.10 \times 1.220^{2/}}{(1.08)^{4}}$$

$$I = 10,533$$

$$\text{COST} = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1-t) - t.DPR_i}{(1+K)^i}$$

$$= 10,533$$

[1]ITC is recognized the year the boiler is put into operation.

[2]ITC is recognized the year after the boiler becomes coal capable.

$$+ \sum_{i=1}^{3} \frac{(471 + 2,742)(1 - 0.46)}{(1.08)^i}$$

$$+ \sum_{i=4}^{40} \frac{(1,989 + 1,640)(1 - 0.46)}{(1.08)^i}$$

$$- \sum_{i=1}^{23} \frac{0.46 \times DPR_i^{1/}}{(1.08)^i} - \sum_{i=4}^{26} \frac{0.46 \times DPR_i^{2/}}{(1.08)^i}$$

$$\text{COST} = 30,772$$

[1]This term accounts for the initial investment required to make the boiler oil capable. The depreciation method is double declining balance switching to straight line. The tax life is 23 years.

[2]This term accounts for the additional investment required to make the boiler coal capable. The depreciation method is double declining switching to straight line. The tax life is 23 years.

(E) Compute the ratio of the cost of using coal starting at the end of the third year to the cost of using oil throughout the life of the boiler.

$$R = \frac{\text{COST (COAL)}}{\text{COST (OIL)}}$$

$$= \frac{30,772}{22,278}$$

$$= 1.38$$

This ratio and the ratio computed in (f)(9)(i)(C) of this section are higher than the index set by ERA. If all the ratios, including the nine other ratios not computed in this example, are higher than 1.3, you would be eligible for a permanent exemption. If all the ratios are not greater than 1.3 and a series of ratios, starting with the case computed in (f)(9)(i)(C) of this section, are higher than 1.3, a temporary exemption would be granted for the minimum period in which the ratios always exceed 1.3.

(ii) Special cost test.

(A) Compute the cost of using coal in a coal boiler assuming the length of the exemption is 3 years.

$$\text{COST} = I \times \frac{\sum_{i=1}^{P} (1+K)^{-i}}{\sum_{i=1}^{N} (1+K)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t) - t(DPR_i)}{(1+K)^i}$$

$$= 9,345 \times \frac{\sum_{i=1}^{3} (1.08)^{-i}}{\sum_{i=1}^{40} (1.08)^{-i}} + \sum_{i=1}^{3} \frac{(1,989 + 2,460)(1 - 0.46)}{(1.08)^i}$$

$$- \sum_{i=1}^{3} \frac{0.46 \times DPR_i \text{ [1/]}}{(1.08)^i}$$

$$= 7,352$$

(B) Compute the cost of using oil in a coal and oil boiler assuming the exemption is 3 years.

$$\text{COST} = I \times \frac{\sum_{i=1}^{P} (1+K)^{-i}}{\sum_{i=1}^{N} (1+K)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t) - t(DPR_i)}{(1+K)^i}$$

$$= 10,533 \times \frac{\sum_{i=1}^{3} (1.08)^{-i}}{\sum_{i=1}^{40} (1.08)^{i}} + \sum_{i=1}^{3} \frac{(471 + 2,742)(1 - 0.46)}{(1.08)^i}$$

$$- \sum_{i=1}^{3} \frac{0.46 \times DPR_i \text{ [2/]}}{(1.08)^i}$$

$$= 5,862$$

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[1] Depreciation is double declining balance switching to straight line. The tax life is 23 years for the entire boiler.

[2] This term accounts for the initial investment required to make the boiler oil capable. It does not reflect the additional investment necesary to burn coal. The depreciation method is double declining balance switching to straight line. The tax life is 23 years.

(C) Compute the ratio of the cost of using coal to the cost of using oil.

$$R = \frac{\text{COST (COAL)}}{\text{COST (OIL)}}$$

$$= \frac{7,352}{5,862}$$

$$= 1.25$$

This ratio (R) is lower than 1.3. You would not receive a temporary exemption of three years. However, if the ratio computed where the use of coal is delayed one and two years are higher than 1.3, you would get a temporary exemption of two years.

§ 505.6 [Reserved]

§ 505.7 Use of mixtures—General requirement for permanent exemptions.

(a) *Application:* ERA will consider a petition for any of the following exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, state or local requirements, cogeneration, emergency purposes, product/process, or equipment outages) to be incomplete, inadequate, or unacceptable for filing unless you demonstate to the satisfaction of ERA that you have considered the use of a mixture(s) for which an exemption under § 505.28 (Fuel mixtures) of these regulations would be available.

(b) *Demonstration.* ERA will deny petitions for any of the exemptions listed above unless you demonstrate that use of such a mixture(s) is not economically or technically feasible in the unit for which you are requesting an exemption. You must submit to ERA in your Fuels Decision Report (or in your petition for an emergency or peakload exemption) at least the following evidence in order to make the demonstration required by this section:

(1) If use of a mixture(s) were required, you would be eligible for one of the following permanent exemptions provided for in the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, or state or local requirements; or

(2) Use of a mixture(s) is not technically or economically feasible in your specific unit due to design or special circumstances.

§ 505.8 Use of fluidized bed combustion not feasible—General requirement for permanent exemptions.

(a) *ERA finding.* ERA may deny any of the following permanent exemptions provided for in Section 212 of the Act (lack of alternate fuel supply, site limitations, environmental requirements, inability to obtain adequate capital, state or local requirements, cogeneration, emergency purposes, product/process, or equipment outages), if ERA finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

(b) *Demonstration.* If ERA has made such a finding, ERA will deny your request for exemption unless you demonstrate that the use of a method of fluidized bed combustion is not economically or technically feasible. You must include in your Fuels Decision Report or any supplement thereto required by ERA (or in your petition for an emergency or peakload exemption) at least the following evidence:

(1) If use of a method of fluidized bed combustion were required, you would be

eligible for one of the following permanent exemptions provided for in Section 212 of the Act: lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or state and local requirements; or

(2) Use of a method of fluidized bed combustion is not technically or economically feasible in your specific unit due to design or special circumstances.

§ 505.9 Terms and conditions; compliance plans.

(a) *Terms and Conditions generally.* You must comply with the terms and conditions of an exemption granted under the Act by ERA, including terms and conditions requiring use of effective fuel conservation measures.

(b) *Compliance plans for temporary exemptions.*

(1) A compliance plan certified by your duly authorized representative must accompany each petition for a temporary exemption. The compliance plan shall include at least the following:

(i) A specific schedule of milestones indicating how you will comply with the applicable prohibitions of the Act;

(ii) Evidence of binding contracts for fuel, or facilities for the production of fuel, which are needed to comply with the applicable prohibitions of the Act; and

(iii) Any other documentary evidence which indicates your ability to comply with the applicable prohibitions of the Act.

(2) The exemption shall not be effective until the compliance plan is approved by ERA.

(3) *Revisions of compliance plans.* If the petition is granted, you must submit to ERA an updated compliance plan certified by your duly authorized representative:

(i) At the end of each 12-month period from the effective date of the exemption;

(ii) Within 1 month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan; and

(iii) At any time ERA, in its discretion, determines that a revised compliance plan may be necessary to reflect changes in circumstances.

(c) *Enforcement.* Any exemption is subject to termination upon the violation of any provision of the exemption or any provision of the pertinent compliance plan.

Subpart C—Temporary Exemptions for New Major Fuel Burning Installations

§ 505.10 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to temporary exemptions for new installations.

(b) This subpart establishes the criteria and standards which owners or operators of new installations who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) All petitions for temporary exemptions for new installations must be submitted in accordance with the procedures set out in Part 501 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date the installation is placed in service.

§ 505.11 Lack of alternate fuel supply.

(a) *Eligibility.* Section 211(a)(1) of the Act provides for a temporary exemption due to the unavailability of an adequate and reliable supply of an alternate fuel supply. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the new installation;

(2) For the period of the proposed exemption, the cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source as defined in § 505.5 (Cost Calculation) of these regulations; and

(3) You will be able to comply with the applicable prohibitions of these regulations at the end of the proposed exemption period.

(b) *Evidence required in support of a petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) A description of your analysis of the alternate fuels you considered for use;

(2) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions;

(3) A description of the detailed design requirements you specified for the new installation, including capacity, alternate fuel capability, and all other specifications;

(4) A description of the range of specific fuel characteristics of all the

fuels which can be used by the new installation;

(5) Evidence that you sought to obtain the full range of alternate fuels which could be used by the new installation, including bid requests and/or advertisements for supply contracts and responses thereto, as well as any other arrangements you attempted to make to secure supplies; and

(6) Evidence of the contracts or other arrangements you have made to insure a reliable and adequate supply of an alternate fuel at the end of the proposed exemption.

(7) All data required by § 505.8 (Cost Calculation) necessary for computing the cost calculation formula.

(c) *Compliance Plan.* You must submit to ERA a compliance plan in accord with § 505.9 of these regulations simultaneously with submission of your petition. You must submit an updated compliance plan, if applicable, as required by § 505.9 of these regulations or as may be required by the terms of any order granting an exemption under this subpart.

(d) Duration. This temporary exemption, taking into account any extensions or renewals, may not exceed 10 years.

§ 505.12 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a temporary exemption due to a site limitation. To qualify for such an exemption you must demonstrate that one or more of the following specific physical limitations relevant to the location or operation of your installation exist which, despite your diligent good faith efforts, cannot be overcome before the end of the proposed exemption period:

(1) Alternate fuels would be inaccessible as a result of a specific physical limitation;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate land or facilities for handling, using or storing an alternate fuel would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) Adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed installation using an alternate fuel.

(b) *Evidence required in support of the petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of a Federal, state, or local law which could be the basis of an exemption under § 505.26 (State or local requirements);

(2) Evidence that alternate means of overcoming the specific site limitations were considered, with a detailed description of the efforts made to overcome the site limitations set out in your petition;

(3) Evidence of the equipment or space requirement for which the site limitation is claimed;

(4) Evidence of the contracts or other arrangements you have made to insure that the site limitation will be overcome and that you will be able to comply with the prohibitions at the end of the proposed exemption period. Examples of evidence relevant to establishing a site limitation for purposes of a temporary exemption are as follows:

(i) Detailed documentation of impediments, including right of way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitations;

(ii) Identification of transportation facilities relevant to the specific site and a demonstration why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements and general efforts made to secure alternative transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed installation;

(v) Detailed site plans of the entire facility including those areas not directly involved with the specific installation;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuel;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternative fuel storage facilties;

(viii) Copies of quotes from bona fide suppliers, indicating leadtimes for purchase and installation of required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of waste;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed installation;

(xi) A description of efforts made to secure offsite disposal areas, including the cost of acquisition of the sites, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

(c) *Compliance Plan.* You must submit to ERA simultaneously with your petition a compliance plan in accordance with §505.9 of these regulations. You must submit an updated compliance plan, if applicable, as required by §505.9 of these regulations and as may be required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed 5 years.

§505.13 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of the ERA that, despite diligent good faith efforts:

(1) You will be unable to comply with the applicable prohibitions imposed by the Act without violating applicable Federal or State environmental requirements as of the projected date of commencement of operation; and

(2) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the temporary exemption period.

(b) *Criteria.* ERA's decision with regard to environmental compliance will be based solely on an analysis of your capacity to physically achieve applicable environmental requirements. You should direct your analysis toward those conditions or circumstances which make it physically impossible for you to comply with applicable environmental requirements during the temporary exemption period. Cost of compliance shall not enter into the analysis, but any cost-related considerations may be presented as part of a demonstration submitted under §505.11.

(c) *Evidence required in support of the petition.* You must submit at least the following evidence to corroborate the above requirements:

(1) If you elect to seek a construction permit from EPA or an appropriate State agency prior to petitioning for an exemption from ERA, a copy of your application and a detailed synopsis of all supporting documents filed with or subsequent to your application to EPA or the appropriate State agency;

(2) To the extent applicable, a copy of the EPA or State denial of your construction permit application;

(3) To the extent applicable, a detailed synopsis of the administrative record of the EPA or State or local permit proceedings;

(4) To the extent applicable, an analysis of the technology upon which the denial was based, including a performance comparison between the proposed technology and that technology which would provide the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of the ability to meet applicable standards and criteria when using both the proposed fuel and all alternate fuels for which you are requesting an environmental exemption. All conclusions regarding the ability of the facility to comply must be based on accepted analytical techniques, such as air quality modeling, and must reflect current conditions of the area which would be affected by the facility. You are responsible for performing the necessary sampling and collecting sufficient data to accurately characterize these conditions. Environmental compliance must be examined in the context of the available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain requests for bids and other inquiries made and responses received by you concerning the availability and performance of pollution control equipment; contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment; or other comparable evidence such as technical studies documenting efficacy of equipment to meet applicable requirements; and

(6) An examination of the regulatory options available to you in seeking to achieve environmental compliance. This examination must include an analysis of the availability of offsets, if needed, and the potential for securing variances and State Implementation Plan revisions, as appropriate. The analysis must illustrate and document your efforts, if any, to locate, identify, and acquire offsets, including agreements made by you with the State or other companies for acquisition of offsets. If an agreement to acquire offsets is conditioned upon the grant of a variance, or State Implementation Plan revision, you must submit a letter from the State agency indicating when a proceeding to effectuate the agreement will take place. The analysis must contain any correspondence initiated or received by you concerning these regulatory options and all technical studies you have relied upon to support your conclusions.

(7) In addition, you may submit any other documentation you believe demonstrates an inability to comply with applicable environmental requirements despite diligent good faith efforts.

(d) *Compliance Plan.* You must submit to ERA a compliance plan in accordance with § 505.9 of these regulations simultaneously with the submission of your petition. An updated compliance plan as required by § 505.9 of these regulations and as may be required by the terms of any order granting an exemption under this subpart must also be submitted as applicable.

(e) *Other Actions.*

(1) Prior to deciding to submit an exemption application, it is recommended that you request a meeting with ERA and EPA or the appropriate State or local regulatory agency to discuss options for operating an alternate fuel-fired facility in compliance with applicable environmental requirements; and

(2) You must submit a copy to ERA of your application for a construction permit at the same time you submit it to EPA or the state agency.

(f) *Duration.* This temporary exemption, taking into account extensions and renewals, may not exceed five years, and will be issued by ERA for such time period up to and including five years as the petition demonstrates is necessary.

§ 505.14 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You will be able to comply with the applicable prohibitions imposed by the Act by the end of the proposed exemption period by the use of synthetic fuel as a primary energy source in your powerplant;

(2) You will not be capable of complying with the applicable prohibitions imposed by the Act by using a synthetic fuel in your powerplant before the end of the proposed exemption period.

(b) *Evidence required in support of the petition.* You must include in your Fuels Decision Report at least the following evidence in order to make a demonstration required by this Section:

(1) Copies of economic and technical feasibility studies pertaining to the use of synthetic fuels by your proposed powerplants;

(2) Reliable evidence of the financial commitments you have made to construct, operate and maintain equipment which will use synthetic fuel as the primary energy source at the end of the proposed exemption period;

(3) Copies of bid requests, advertisements, contracts and/or other agreements relating to the production, purchase and transportation of synthetic fuel; and

(4) Information with regard to permits that may be required by Federal or state agencies for the construction and operation of a powerplant using synthetic fuels.

(c) *Compliance plan.* You must submit to ERA a compliance plan in accordance with Section 214 of the Act and § 503.12 of these regulations simultaneously with submission of your petition to satisfy ERA requirements for petition adequacy. You shall submit an updated complaince plan as required by § 503.12 of these regulations and as required by the terms of any order granting an exemption under this subpart.

(d) *Duration.* This temporary exemption may be granted for a period of up to 5 years and may be extended for up to an additional 5 years, but so extended, may not exceed 10 years.

§ 505.15 Public interest exemption.

(a) *Policy Note.* The use of coal and other alternate fuels in lieu of petroleum and natural gas is in the public interest. ERA will grant this temporary exemption where you are unable to comply immediately with the prohibitions of the Act, where the granting of the petition would be in the public interest, and where you will be in compliance with the prohibitions imposed by the Act at the end of the exemption period. In filing your petition, you are required to complete the portions of the Fuels Decision Report (FDR) specified in § 502 of these Interim Rules and demonstrate why your proposed facility could not burn a fuel mixture during the time the exemption is in effect. ERA recognizes, however, that there are situations where the public interest would best be served by not requiring the FDR and mixture demonstration; consequently, ERA strongly urges you to request a prepetition conference where, after a consideration of the facts of your case, ERA could waive all or part of these requirements. As an example, ERA will generally waive these requirements where you temporarily need the use of a natural gas- or petroleum-fired rental unit to provide steam until the ongoing construction of an alternate fuel-fired unit is completed.

(b) *Eligibility.* Section 211(c) of the Act provides for a temporary public interest exemption. To qualify, you must demonstrate to the satisfaction of ERA that:

(1) You are unable to comply with the applicable prohibitions imposed by the Act, except in extraordinary circumstances, during the period for which the exemption is requested, but that you will be capable of complying at the end of the proposed exemption period; and

(2) The granting of the petition would be in accord with the purposes of the Act and would be in the public interest.

(c) *Evidence Required in Support of the Petition.* You must include at least the following evidence in order to make the demonstration required by this Section:

(1) substantial evidence to corroborate the eligibility requirements identified above;

(2) a demonstration that the use of a mixture, for which an exemption under § 505.28 (Fuel Mixtures) would be available, is not technically or economically feasible during the period the temporary public interest exemption is in effect; and

(3) Information and data required by §§ 502.4 (Introduction), 502.7 (Evidence for Exemption Requested), and 502.12 (Conservation Measures) of the Fuels Decision Report as set out in Part 502.

(d) *Compliance Plan.* You must submit to ERA a compliance plan in accordance with § 505.9 of these regulations simultaneously with submission of your petition. You must submit, if applicable, an updated compliance plan as required by § 505.9 of these regulations and as may be required by the terms of any order granting an exemption under this subpart.

(e) *Duration.* This temporary exemption, taking into account extension and renewals, may not exceed 5 years.

Subpart D—Permanent Exemptions for New MFBI's

§ 505.20 Purpose and scope.

(a) This subpart implements the provisions contained in Section 211 of the Act with regard to permanent exemptions for new major fuel burning installations and establishes the criteria and standards which owners or operators of new installations who petition for a permanent exemption must meet to sustain their burden of proof.

(b) If a petition for a permanent exemption is filed pursuant to § 505.21 (Lack of Alternate Fuel Supply for the First 10 Years of Useful Life); § 505.22 (Lack of Alternate Fuel Supply at a Cost Which Does Not Substantially Exceed the Cost of Using Imported Petroleum); § 505.23 (Site Limitations); § 505.24 (Inability to Comply with Applicable Environmental Requirements); § 505.25 (Inability to Obtain Adequate Capital); or § 505.26 (State or Local Requirements), you must demonstrate in your Fuels Decision Report that your inability to use each reasonable alternate fuel would entitle you to one or more of the above exemptions.

(c) All petitions for permanent exemptions for new installations must be submitted in accordance with the procedures set out in Part 501 of these regulations.

§ 505.21 Lack of alternate fuel supply for the first 10 years of useful life.

(a) *Eligibility.* Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to the lack of an adequate and reliable supply of alternate fuel within the first 10 years of the useful life of the new installation To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the new installation; and

(2) Such a supply is not likely to be available within the first 10 years of the useful life of the new installation.

(b) *Evidence required in support of the petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section.

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions.

(2) A description of the detailed design requirements you specified for the new installation, including capacity, alternate fuels capability, and all other pertinent specifications.

(3) A description of the range of specific fuel characteristics of all the fuels which can be used by the new installation;

(4) Evidence that you sought to obtain the full range of alternate fuels which could be used by the new installations;

(5) Evidence that you solicited at least 5 bids from suppliers who could reasonable be expected to supply an adequate and reliable supply of the quantity and quality of alternate fuel needed, including bid requests and/or advertisements for supply contracts and all proposals or responses thereto, as well as any other arrangements you attempted to make to secure supplies;

(6) A description of your analysis of the alternate fuel you considered, including a discussion of how you made your assessment that an adequate and reliable supply of the quality of fuel needed would not be available within the first 10 years of useful life of the new installation.

§ 505.22 Lack of alternate fuel supply at a cost which substantially exceeds the cost of using imported petroleum.

(a) *Eligibility.* Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to the lack of an alternate fuel supply at a cost which substantially exceeds the cost of using imported oil. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You made a good faith effort to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with design and operational requirements of the new installation; and

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source, as defined in § 505.5 (Cost Calculation) of these regulations during the useful life of the new installation.

(b) *Evidence required in support of the petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) A description of the alternate unit designs you considered in a good faith effort to comply with the applicable prohibitions.

(2) A description of the detailed design requirements you specified for the new installation, including capacity, alternate fuels capability, and all other pertinent specifications.

(3) A description of the range of specific fuel characteristics of all of the fuels which can be used by the new installation;

(4) Evidence that you sought the full range of alternate fuels which could be used by the new installation, including bid requests, and/or advertisements for supply contracts, all responses you received, as well as any other arrangements you attempted to make to secure supplies;

(5) All data required by § 505.5 of these regulations (Cost Calculation)

necessary for computing the cost calculation formula; and

(6) A description of your analysis of the alternate fuels you considered.

§ 505.23 Site limitations.

(a) *Eligibility.* Section 211(a)(2) of the Act provides for a permanent exemption because of a site limitation. To qualify you must demonstrate to the satisfaction of the ERA that, despite good faith efforts:

(1) Alternate fuels would be inaccessible to the location or operation of the proposed installation as a result of a specific physical limitation;

(2) Transportation facilities for alternate fuels would be unavailable;

(3) Adequate land or facilities for handling, using or storing alternate fuels would be unavailable;

(4) Adequate means for controlling and disposing of wastes would be unavailable;

(5) An adequate and reliable supply of water would be unavailable; or

(6) Other site limitations exist which would not permit the location or operation of the proposed installation using an alternate fuel and that these limitations cannot be reasonably expected to be overcome within 5 years after the commencement of operations.

(b) *Evidence required in support of the petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) Evidence that the site limitation is a physical limitation, and not a requirement of a Federal, state, or local law which could be the basis of an exemption under § 505.26 (State or local requirements);

(2) Evidence that alternate means for overcoming the specific site limitations were sought, with a detailed description of the efforts made to overcome the site limitations set out in your petition; and

(3) Evidence of necessary equipment or space requirements for which the site limitation is claimed. Examples of evidence relevant to establishing a site limitation for purposes of a permanent exemption are as follows:

(i) Detailed documentation of impediments, including right-of-way problems, site diagrams, maps of the surrounding areas and other items essential to the showing of a site limitation;

(ii) Identification of transportation facilities relevant to the geographic site of the installation and a demonstration showing why existing transportation facilities cannot be utilized or new facilities constructed;

(iii) Copies of bid requests, advertisements and general efforts made to secure alternate transportation facilities;

(iv) Identification of potential alternate fuel storage locations within a reasonable geographic area surrounding the proposed installation;

(v) Detailed site plans of the entire facility which include those areas not directly involved with the specific installation;

(vi) A specific listing of all equipment necessary and not currently available to properly handle alternate fuels;

(vii) Copies of bid requests, advertisements and general efforts made to secure alternate storage facilities;

(viii) Copies of quotes from bona fide suppliers, indicating leadtimes for purchase and installation of required ancillary storage or handling equipment;

(ix) Specific listing of any equipment necessary and not currently available to properly control and dispose of wast;

(x) Identification of potential alternate waste disposal locations within a reasonable geographic area surrounding the proposed powerplant;

(xi) A description of efforts made to secure offsite disposal areas, transportation facilities and waste handling costs involved in their use; and

(xii) Copies of bid requests, advertisements, and general efforts made to secure waste control and disposal equipment.

§ 505.24 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 212(a)(1)(C) of the Act provides for a permanent exemption due to inability to comply with applicable environmental requirements. To qualify you must demonstrate to the satisfaction of ERA that, despite good faith efforts, you cannot burn alternate fuel without violating applicable environmental requirements within 5 years after the projected date of commencement of operation. ERA's decision with regard to compliance will be based solely on an analysis of your capacity to physically achieve applicable environmental requirements. The cost of compliance shall not enter into the analysis, but any cost-related considerations may be presented as part of a demonstration submitted under § 505.22.

(b) *Evidence supporting petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) If you elect to seek a construction permit from EPA or an appropriate state agency prior to petitioning for an exemption from ERA, a copy of your application and a detailed synopsis of all supporting documents filed with or subsequent to your application to EPA or the appropriate state agency.

(2) To the extent applicable, a copy of the EPA or state denial of your construction permit application;

(3) To the extent applicable, a detailed synopsis of the administrative record of the EPA or state or local permit proceedings;

(4) To the extent applicable, an analysis of the technology upon which the denial was based, including a performance comparison between the proposed technology and that technology which would provide the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of the ability to meet applicable standards and criteria when using both the proposed fuel and all alternative fuels for which you are requesting an environmental exemption. All conclusions regarding the ability of the facility to comply must be based on accepted analytical techniques, such as air quality modeling, and must reflect current conditions of the area which would be affected by the facility. You are responsible for performing the necessary sampling and collecting sufficient data to accurately characterize these conditions. Environmental compliance must be examined in the context of the available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain requests for bids and other inquiries made and responses received by you concerning the availability and performance of pollution control equipment, or other comparable evidence such as technical studies documenting efficacy of equipment to meet applicable requirements; and

(6) An examination of the regulatory options available to you in seeking to achieve environmental compliance. This examination must include an analysis of the availability of offsets, if needed, and the potential for securing variances and State Implementation Plan revisions, as appropriate. The analysis must illustrate and document your efforts, if any, to locate and identify available offsets, and to secure variances and SIP revisions. The analysis must contain any correspondence initiated or received by you concerning these regulatory options and all technical studies you have relied upon to support your conclusions.

In addition, you may submit any other documentation you believe demonstrates an inability to comply with applicable environmental requirements despite good faith efforts.

(c) *Other actions.*

(1) Prior to deciding to submit an exemption application, it is recommended that you request a meeting with ERA and EPA or the appropriate state or local regulatory agency to discuss options for operating an alternate fuel-fired facility in compliance with the applicable environmental requirements; and

(2) You must submit a copy to ERA of your application for a construction permit at the same time you submit it to EPA or the state agency.

§505.25 Inability to obtain adequate capital.

(a) *Eligibility.* Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To quality you must demonstrate to the satisfaction of ERA that despite good faith efforts, you will be unable to comply with the applicable prohibition imposed by the Act because you cannot raise the additional capital required for an alternate fuel-capable installation beyond that required for your proposed installation. If you are part of a firm, the analysis must be at the firm level.

(b) *Evidence required in support of the petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) A description of your efforts to raise the additional capital, including a list of all financial institutions and individuals contacted as well as a summary of the results of each contact. If your inability to raise the additional capital is affected by specific restrictions, describe those restrictions and their effect.

(2) A detailed accounting of the additional capital required to construct and operate the alternate fuel-capable facility.

(3) An estimated accounting on a calendar-year basis of all cash outlays for capital investments and expenses for both your proposed unit and for an alternate fuel fired unit. All critical assumptions should be stated and sufficient data should be included to support your estimate.

(4) A detailed statement of the sources of funds you will raise to construct and operate your proposed installation.

(5) An analysis of the sources of funds available if the alternate fuel capable powerplant is constructed and operated.

(6) Your annual reports for the past 5 years.

(7) A 5-year summary of the financial records of the firm. If you are part of a consolidated corporation, the information must be at the consolidated corporation level. The 5-year summary shall include: [19]

(i) Balance sheets.

(ii) Income statements.

(iii) Fund flow statements.

(8) Standard financial indicators for the past 5 years which include: [20]

(i) Earnings per share of common and preferred stock.

(ii) Return on equity.

(iii) Current ratio and quick ratio.

(iv) Times-interest earned ratio.

(v) Price-earnings ratio for common stock.

(vi) Market-to-book ratio for common stock.

(vii) Latest Standard & Poor's or Moody's ratings on common stock, preferred stock, and bonds.

(9) A list of all investments made by your firm (or consolidated corporation) in excess of $1 million during the past 3 years. This list should specify the capital outlays by calendar year and the manner in which the outlay was financed.

(10) Any other relevant financial information that would reflect upon your ability to raise adequate capital to finance an alternate fuel-fired installation.

§ 505.26 State or local requirements.

(a) *Eligibility.* Section 212(b) of the Act provides for a permanent exemption due to state or local requirements which would preclude the construction and operation of an alternate fuel-fired installation. To qualify you must demonstrate to the satisfaction of ERA that:

(1) With respect to the proposed site of the installation, the operation or construction of the new installation using an alternate fuel is infeasible because of a state or local requirement other than a building code, nuisance or zoning law;

(2) You have in good faith attempted unsuccessfully to obtain a variance or waiver from the state or local requirement or can demonstrate why none is available;

(3) The granting of the exemption would be in the public interest and would be consistent with the purposes of the Act; and

(4) You are not entitled to a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, or inability to obtain adequate capital for all alternate fuels.

(b) *Evidence required in support of a petition.* You must include at least the following evidence to make the demonstration required by this section:

(1) A copy of the pertinent state or local requirement with its citation and its legislative history;

(2) The identification and location of the administrative body which implements the requirement;

(3) A description of your attempts to obtain a waiver or variance from the requirements or a demonstration of why none is available;

(4) A description of any activities you were involved in after April 20, 1977, pertaining to the enactment of the requirement;

(5) A description of equipment, procedures, and the advance planning time necessary to comply with the requirement;

(6) A detailed description of why compliance with the state or local requirement is infeasible;

(7) The impact upon you and/or your local community, if any, should your petition be denied;

(8) An explanation of the reasons why granting this exemption would be in the public interest; and

(9) An analysis of why you cannot qualify for any of the exemptions listed in paragraph (a)(4) of this section for all alternate fuels.

(c) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

§ 505.27 Cogeneration.

(a) *Eligibility.* Section 212(c) of the Act provides for a permanent exemption for cogeneration. To qualify you must demonstrate to the satisfaction of ERA at least the following minimum criteria:

(1) The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility where the calculation of savings is in accordance with paragraph (c) of this section;

(2) It would be in the public interest to grant an exemption to the cogeneration facility because of special circumstances such as technical innovation or maintaining industry in urban areas.

[19] If the information is contained in your annual reports, it need not be reported.

[20] If the information is contained in your annual reports, it need not be reported.

(b) *Specifications of the cogeneration facility.*

(1) A person proposing to construct a cogeneration facility may apply for an exemption under this section if the amount of net electricity that is either sold or exchanged is less than 50 percent. If the amount is 50 percent or more, see § 503.37 (Powerplants). Net electricity excludes sales or exchanges among owners of the cogeneration facility.

(2) Electricity generated by the proposed cogeneration facility must constitute more than 10 percent of the useful energy output of the facility and less than 90 percent of the useful energy output.

(c) *Calculation of oil and gas savings.* There is an oil and gas savings if the oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility. The calculation of the oil and gas which would otherwise be consumed must be in accordance with paragraphs (c) (1) and (2) of this section.

(1) Except for the case described in paragraph (c)(2) of this section, the oil or gas which would otherwise be consumed must be calculated as follows:

(i) You may include the oil or gas that would be consumed by facilities that are or would be too small to be covered by the FUA regulations. In the case of new small industrial units, you must demonstrate that it would be reasonable to construct units of that size.

(ii) You may include the oil or gas that would be consumed by units in place (existing or exempt) covered by FUA if they are less than 40 years old in the case of a field-erected unit or less than 20 years old in the case of a package unit. In the case of existing units, you may not include units that have burned an alternate fuel or are capable of burning an alternate fuel, and, you may only include units described by this paragraph if they will be retired or shut down if this exemption is granted.

(iii) You may include the oil or gas that would be consumed by units not yet constructed that would be covered by the FUA regulations if you can demonstrate that each unit would be entitled to an exemption.

(iv) You may include the oil or gas that would be consumed by powerplants to generate electricity supplied to the grid to the extent that such electricity, if you cogenerate, will no longer be supplied by the grid. The oil or gas portion must be based on a 10 year forecast that includes new construcion and retirement of plants within those 10 years.

(2) In the case of a cogeneration facility that would consist of an existing unit or an exempted unit and a new unit, you must calculate the amount of oil or gas that would otherwise be consumed as the sum of:

(i) The five-year annual average oil or gas consumption of the existing or exempted unit; and

(ii) The amount that would be consumed in units described in paragraphs (c)(1)(i)(iv) of this section that would now be satisfied by the new cogeneration facility.

(d) *Evidence required in support of a petition.* You must include at least the following evidence in order to make the demonstration required by this section:

(1) An engineering description of the cogeneration system, including proposed output and uses thereof, with sufficient detail to ensure that the facility qualifies as a cogeneration facility;

(2) A detailed oil and natural gas savings calculation identifying the projected oil or natural gas consumption of the cogeneration facility and the oil or natural gas that would otherwise be used;

(3) Identification of the FUA status of the proposed and displaced units with respect to coverage and designation as new, existing, or exempted, age of units, and alternate fuel capability of units;

(4) Identification of all persons and their roles in the proposed cogeneration facility;

(5) Where a demonstration is required that the units would be entitled to an exemption, submission of all evidence required by the regulations with respect to the applicable exemptions, including the alternate site showings; and

(6) In the case of paragraph (a)(2) of this section, an explanation of the public interest factors you believe should be considered by ERA.

(e) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

§ 505.28 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) *Eligibility.* Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify you must demonstrate to the satisfaction of ERA that:

(1) You propose to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source; and

(2) The amount of petroleum or natural gas you propose to use in the mixture will not exceed the minimum percentage of the total annual Btu heat input needed to maintain operational reliability of the installation consistent with maintaining a reasonable level of fuel efficiency.

(b) *Minimum percentage.* If the exemption is granted, ERA will not require that the percentage of petroleum or natural gas used in the mixture be less than 25 percent of the total annual Btu heat input of the installation.

(c) *Evidence required in support of a petition.* You must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section:

(1) A complete description of the fuel mixture, component elements of the mixture, and percentage of each component to be utilized;

(2) Your design specifications for the unit for which you are requesting an exemption; and

(3) An engineering assessment of the proportions of petroleum or natural gas needed to maintain operational reliability and adequate level of fuel efficiency; or

(4) If the unit will use a mixture containing less than 25 percent petroleum or natural gas, a certification that the amount of petroleum or natural gas you propose to use in the mixture will not exceed 25 percent of the total annual Btu heat input of the installation. The certification shall be executed by your duly authorized representative.

(d) *Reporting requirement.* If the exemption is granted, you must submit an annual report to ERA certifying that the affected units have used no more than the percentage of oil or natural gas specified in the exemption order. The certification shall be executed by your duly authorized representative.

(e) *Solar mixtures.* ERA will grant a permanent mixtures exemption for the use of a mixture of solar energy (including wind, tide, and other intermittent sources) and petroleum or natural gas, where—

(1) Solar energy will account for at least 20 percent of the annual Btu heat input of the unit; and

(2) You propose an acceptable plan to ERA which—

(i) Meets the evidence requirements set forth in paragraph (c) of this section; and

(ii) Contains a compliance plan prepared in accordance with § 505.9 of these regulations.

§ 505.29 Emergency purposes.

(a) *Eligibility.* Section 212(e) of the Act provides for a permanent exemption for emergency purposes. To qualify you must demonstrate to the satisfaction of ERA that you will operate and maintain the installation for emergency purposes only.

(b) *Definition.* For the purpose of this permanent exemption, an emergency exists when operation of an oil or gas-fired installation is necessary for: (1) plant protection; (2) the preservation of human health; or (3) continued facility production which otherwise would be reduced due to an interruption of alternate fuel supplies, equipment failures, or temporary environmental restrictions.

(c) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your petition at least the following evidence:

(1) Certification executed by a duly authorized officer of the company stating that operation under the provisions of this exemption will occur only in accordance with the definition of emergency;

(2) A description of the other units at the site including for each the capacity, type of fuel consumed, average utilization rate, designation as "new" or "existing" under this program, and exemption, if any;

(3) A description of the types of emergency situations you believe may arise which cause you to request this exemption;

(4) All data required by § 505.7 (use of mixtures—general requirement) of these regulations demonstrating that use of a mixture(s) is not economically or technically feasible; and

(5) All data required by § 505.8 (use of fluidized bed combustion not feasible—general requirement) if ERA has made a generic or site-specific finding that the use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

(d) *Additional information.* You must submit the following additional information:

(1) All data required by § 502.11 (Petroleum and natural gas use) of these regulations;

(2) All data required by § 502.12 (Conservation measures) of these regulations which described any oil or natural gas conservation measures you have taken or intend to take if the exemption is granted; and

(3) All data required by § 502.13 (Environmental impacts analysis) of these regulations which will assist ERA to fulfill its responsibilities under the National Environmental Policy Act (NEPA).

(e) *Reporting requirement.* At the end of each 12-month period from the effective date of the exemption, you must report to ERA the amount of fuel used under this exemption by month. You must also describe the emergency conditions that required the operation of the unit.

§ 505.30 [Reserved]

§ 505.31 Scheduled equipment outages.

(a) *Eligibility.* Section 212(j) of the Act provides for a permanent exemption to meet scheduled equipment outages. To qualify you must demonstrate to the satisfaction of ERA that:

(1) Your routine maintenance schedule does not permit, or could not be adjusted to permit, continuing production or other activity carried on at the site unless ERA grants this exemption and the reasons why;

(2) If your scheduled outages and thereby your projected use of the proposed unit exceed 21 days per year, you cannot meet your requirements by burning an alternate fuel; and

(3) The pertinent unit will be used only during those periods when other units are not in operation for reason of scheduled outage.

(b) *Evidence required in support of a petition.* To submit an adequate petition for review by ERA, you must include in your Fuels Decision Report at least the following evidence in order to make the demonstration required by this section.

(1) An explanation of why your routine maintenance schedule does not permit, or could not be adjusted to permit, continuing production or other activity carried on at the site unless ERA grants this exemption;

(2) A schedule of operation for the pertinent unit estimating the number of hours per year used and fuel consumed during the first 12 months of operation after commencement of operation;

(3) A description of the maintenance schedule for all units located at the facility specifically identifying those units at the facility which will be out of service for scheduled maintenance at times when the unit for which the exemption is required, is operating; and

(4) If your scheduled outages and thereby your projected use of the proposed unit exceed 21 days per year, documentary evidence which demonstrates that you considered the use of alternate fuels, including a description of the fuel alternatives you examined and the factors important in your decision to reject the use of alternate fuels. Such factors would include lack of alternate fuel supply, site limitations, environmental requirements, inability to raise adequate capital, or certain state or local requirements.

(c) *Reporting requirement.* ERA will rely upon the schedule of operation of the unit submitted with the petition as the permanent schedule for exempt use. You must notify ERA in advance of any changes to this schedule.

(d) *Exercise of discretion by ERA.* ERA may refuse to grant this exemption to you if it determines that such grant would not be in the public interest or in accordance with the purposes of the Act, notwithstanding the fact that the evidence you have furnished to ERA in your exemption petition substantiates that your facility would otherwise be eligible to receive the exemption.

(e) *Emergency use.* You may apply for an emergency exemption in addition to this exemption for the same unit. You must meet the eligibility and evidence requirements of each exemption to obtain them. You must also comply with the reporting requirements of each.

PART 506—EXISTING MAJOR FUEL BURNING INSTALLATIONS [RESERVED]

PART 507—FUEL CLASSIFICATION AND REPORTING REQUIREMENTS

Authority: (Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); E.O. 12009, 42 FR 4267).

PART 507—FUEL CLASSIFICATION AND REPORTING REQUIREMENTS

§ 507.1 Purpose and scope.

(a) *Purpose.* This subpart excludes certain solid, gaseous and liquid fuels from the terms "natural gas" and "petroleum" for the purpose of the Act and requires reporting by certain users of such excluded fuels.

(b) *Scope.* This subpart applies to use of such excluded fuels in all new and existing electric powerplants and major fuel burning installations.

§ 507.2 Definition of fuels.

(a) Natural gas means any fuel consisting in whole or in part of natural gas, including components of natural gas such as methane and ethane; liquid petroleum gas; synthetic gas derived from petroleum or natural gas liquids; or any mixture of natural gas and synthetic gas, except as designated in § 507.3(f) of this part. Natural gas does not include any of the fuels excluded by § 507.3.

(b) Petroleum means crude oil and products derived from crude oil. Petroleum does not include any of the fuels excluded by § 507.4.

§ 507.3 Exclusions from the definition of natural gas.

(a) Natural gas does not include gas specifically designated as an alternate fuel in these regulations (§ 500.2(a)).

(b) Natural gas does not include that which is commercially unmarketable, by reason of quality, quantity or distance from existing transportation networks. (Additional Definition Reserved.)

(c) Natural gas does not include that produced by the user from a well, the maximum efficient production rate of which is less than 250 million Btu's per day.

For purposes of this subparagraph—

(1) "produced by the user" means:

(i) All gas produced by the well, where such gas is delivered for use in the user's facility through a gas delivery, gathering or transportation system which could not deliver such gas to any other market, or

(ii) Only that amount which represents the user's net working (mineral) interest in the gas produced from such wells, where such gas is delivered for use in the user's facility through a gas delivery, gathering or transportation system which could deliver such gas to another market.

(2) "Maximum efficient production rate" (MEPR) means that rate at which production of natural gas and oil may be sustained without damage to the reservoir or the rate which may be sustained without damage to the ultimate recovery of oil or gas through the well. The MEPR must include the Btu value of any crude oil, gas condensate, and natural gas liquids which may be produced from the well, in addition to that of the natural gas.

(d) Natural gas does not include occluded methane in coal seams, within the meaning of Section 107(c)(3) of the NGPA;

(e) Natural gas does not include, from wells spudded prior to January 1, 1990:

(1) Gas produced from geopressured brine, within the meaning of Section 107(c)(2) of the NGPA;

(2) Gas produced from Devonian shale, within the meaning of Section 107(c)(4) of the NGPA; and

(3) Other gases designated by FERC as "high-cost natural gas" in accordance with Section 107(c)(5) of the Natural Gas Policy Act, except as specifically designated as "natural gas" by ERA.

(f) Natural gas does not include synthetic gas derived from an alternate fuel which is not mixed with natural gas;

(g) Natural gas does not include mixtures of natural gas and synthetic gas derived from alternate fuels for which the person proposing to use the gas certifies to ERA that:

(1) He owns, or is entitled to receive at the point of manufacture, synthetic gas derived from alternate fuels;

(2) He delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to facilities owned by the user; and

(3) The total annual Btu value of the synthetic gas delivered to such a pipeline or pipelines is equal to or greater than the total annual Btu value of the natural gas delivered to the facilities owned by the user, plus the approximate annual total Btu value of any natural gas consumed or lost in transportation.

(4) All necessary permits, licenses, or approvals from appropriate Federal, state, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, except that for purposes of the prohibition under Section 201(2) of the Act against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.

§ 507.4 Exclusions from the definition of petroleum.

Petroleum does not include:

(a) Petroleum products specifically designated as alternate fuels in these regulations (§ 500.2(a));

(b) Synthetic gas derived from crude oil;

(c) Liquid petroleum gas;

(d) Petroleum coke or waste gases from nonrefinery industrial operations; and

(e) A liquid, solid, or gaseous waste by-product of refinery operations, including components (such as butane and propane) which can be extracted from the waste by-product through reasonable further processing of the waste by-product at the refinery and including final products which use the waste by-product as a blend stock at the refinery, which is commercially unmarketable by reason of—

(1) Quality, where—

(i) the by-product could not reasonably be expected to be used in non-refinery operations; or

(ii) The by-product is not a recognized item of commerce in a national market or in the regional or local area in which the facility is located; or

(iii) the cost of processing (limited to upgrading the product to commercial quality), storing, and distributing the by-product would not be covered by reasonably expected revenues from its sale; or

(2) Quantity, where—

(i) the quantities of the by-product are so insufficient or sporadic as not to constitute an adequate and reliable supply to a potential buyer other than the producer; or

(ii) The by-product is produced in quantities significantly less than those quantities normally sold in the appropriate market; or

(iii) the cost of aggregating the product into commercial quantities through storage and distributing the by-product would not be covered by reasonably expected revenues from its sale.

§ 507.5 Reporting requirements of powerplants using natural gas from small wells.

If you own or operate a powerplant which uses or intends to use more than 4.0 billion Btu's per day of natural gas produced from wells with a maximum efficient production rate of less than 250 million Btu's per day (§ 507.3(c)), you must report to ERA by January 31, 1980, and annually thereafter:

(a) Facilities using such gas;

(b) Yearly quantities and the Btu value of such gas used in each such facility;

(c) The number, location and average daily production of all such wells which were acquired

(1) prior to November 9, 1978, and

(2) on or after November 9, 1978.

§ 507.6 Reporting requirements on use of commercially unmarketable natural gas.

If you use or intend to use natural gas which you consider to be commercially unmarketable (§ 507.3(b)), you must file a report to ERA by January 31, 1980, and annually thereafter,

(a) The facilities which are burning such gas;

(b) Yearly quantities and the Btu value of such gas used in each such facility;

(c) The number and location of each well producing such gas burned in each such facility;

(d) The quantity of gas produced from each such well over the past 12 months and the MEPR of each such well;

(e) A projection of the total quantity of such gas you intend to use from such wells over the next 12 months; and

(f) An explanation of why you consider this gas to be commercially unmarketable. (Additional Reporting Requirements Reserved.)

§ 507.7 Reporting requirements on use of commercially unmarketable by-products of refinery operations.

If you use or intend to use solid, gaseous or liquid by-products of refinery operations which you consider to be commercially unmarketable (§ 507.4), you must file a report with ERA by January 30, 1980, and annually thereafter including the following:

(a) The facilities which are burning such by-products;

(b) A description of the solid, gaseous or liquid by-products including the components of those by-products which could physically be extracted, notwithstanding the fact that you may not own the equipment necessary to perform this extraction; and, the end product(s) into which the by-products could be blended, notwithstanding the fact that you may not own such end product(s).

(c) Average monthly production levels of these by-products and their components;

(d) An analysis of why you believe such waste by-products to be commercially unmarketable, by reason of quality or quantity; and

(e) Such other information as ERA may request.

[FR Doc. 79-15403 Filed 5-16-79; 8:45 am]

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10 CFR Parts 503 and 505

[Docket No. ERA-R-78-19E]

Alternate Fuels; Amendment to Preamble to Interim Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Amendment to Preamble to Interim Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy is issuing this amendment to the preamble of the Interim Rules to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA). This amendment replaces a discussion of and requests comments on specific issues associated with an economic test employed in these regulations.

DATES: These interim rules became effective on an interim basis on May 8, 1979. Written comments will be accepted until August 15, 1979, and will be considered by ERA before issuing these rules in final form. No additional public hearings will be held.

ADDRESSES: All comments should be addressed to Public Hearing Management, Docket No. ERA-R-78-19E, Department of Energy, Room 2312, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

WILLIAM L. WEBB (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Stephen M. Stern (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, Room 2130C, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-3987.

Robert L. Davies (Fuels Regulations—Program Office) Economic Regulatory Administration, Department of Energy, Room 6128I, 2000 M Street, N.W., Washington, D.C. 20461 (202) 254-3910.

James Heffernan (Office of General Counsel), Department of Energy, Room 7136, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633-8714.

Background

For purposes of the "substantially exceeds" index in the interim rule implementing the Powerplant and Industrial Fuel Use Act, we assumed that the benefit of displacing natural gas could be measured in part by its effect in displacing imported oil, and that the ratio of such displacement was 1:1. In the preamble to the interim final rule as originally drafted, we discussed the legal and policy issues bearing upon that valuation in terms that may have led to the impression that we had reached a final conclusion on those issues, so that commenters no longer would effectively have opportunity to be heard regarding them. However, the preamble should not be read as expressing the agency's view that ERA's policy options under FUA are necessarily limited to a 1:1 gas to imported oil displacement ratio; rather the issues should be addressed thoroughly during the further comment period. Accordingly, we are amending the preamble to the interim rule in order to highlight these issues and to insure that they receive the most thorough consideration prior to our decision on a final rule.

In consideration of the foregoing, the following paragraphs replace in their entirety the paragraphs regarding the "substantially exceeds" index under the subheading "Gas/Oil Displacement Ratio," in the preamble to the interim rule.

Issued in Washington, D.C., May 13, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Gas/Oil Displacement Ratio

Both RARG's analysis and the analysis in this preamble measure the benefit of FUA's displacement of natural gas by looking to the effects of such gas displacement on oil imports. The RARG analysis assumed that displacing a combination of natural gas and oil through implementation of FUA would result in a .69 to 1 displacement of imported oil. That is, RARG estimated that displacing 100 BTU's of natural gas under the Act reduces oil imports by only 69 BTU's.

The actual displacement ratio is extremely difficult to estimate with confidence. From a purely analytic perspective, the oil import displacement ratio for natural gas is probably less than 1 to 1. There are, however, questions of law and policy under FUA that bear upon the value assigned to natural gas displacement in arriving at the "substantially exceeds" index.

A displacement ratio substantially lower than 1 to 1 is dependent on ample gas supplies over the 30 to 40 year planning period for this program. Where supplies are ample, gas saved by the FUA program will remain in the ground rather than displace imported oil. We believe, however, that it may be inappropriate to assume such gas supplies when making policy judgments under FUA, an Act premised on a need to preserve natural gas because supplies are not ample. Moreover, to assume a displacement ration of less than 1:1, without then assigning a benefit to natural gas displacement on some basis other than by virtue of its displacement of imported oil, would raise questions of law and policy under the Act.

In light of these issues, we are for purposes of this interim rule assuming a natural gas to imported oil displacement ratio of 1:1. We particularly invite comment on what is a reasonable displacement ratio; on what factors should be considered in estimating such a ratio; on whether the benefits of natural gas displacement can be quantified on some basis other than displacement of imported oil; and on whether it is appropriate under FUA to arrive at a substantially exceeds index through a method that in effect values gas displacement differently from oil displacement.

[FR Doc. 79-15638 Filed 5-16-79; 9:39 am]
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

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DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

25172 4-27-79 / House protection

INTERIOR DEPARTMENT

Fish and Wildlife Service—

23062 4-17-79 / Listing of the Bolson Tortoise as an endangered species; final rule

JUSTICE DEPARTMENT

Immigration and Naturalization—

22704 4-17-79 / Seizure and forfeiture of vehicles vessels and aircraft

TREASURY DEPARTMENT

Comptroller of the Currency—

22712 4-17-79 / Loans to foreign governments, their agencies, and instrumentalities utilities; interpretive ruling

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing May 14, 1979